

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report for 1993

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California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

# CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

SANFORD M. SKAGGS  
*Chairperson*

DANIEL M. KOLKEY  
*Vice Chairperson*

CHRISTINE W.S. BYRD  
*Member*

TERRY FRIEDMAN  
*Member of Assembly*

BION M. GREGORY  
*Member*

BILL LOCKYER  
*Member of Senate*

ARTHUR K. MARSHALL  
*Member*

EDWIN K. MARZEC  
*Member*

FORREST A. PLANT  
*Member*

COLIN W. WIED  
*Member*

## COMMISSION STAFF

### Legal

NATHANIEL STERLING  
*Executive Secretary*

STAN ULRICH  
*Assistant Executive Secretary*

BARBARA S. GAAL  
*Staff Counsel*

ROBERT J. MURPHY  
*Staff Counsel*

### Secretarial

VICTORIA V. MATIAS  
*Composing Technician*

## NOTE

The Commission's reports, recommendations, and studies are published in separate pamphlets that are later bound in hardcover form. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound, which permits citation to Commission publications before they are bound. This pamphlet will appear in Volume 23 of the Commission's *Reports, Recommendations, and Studies*.

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4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

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## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 1993 Legislative Session**

In 1993, all seven bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 199 sections, added 266 sections, and repealed 313 sections of California statutes. Commission-recommended legislation enacted in 1993 concerned the following subjects:

- Family Code
- Deposit of estate planning documents
- Parent and child relationship for intestate succession
- Litigation involving decedents
- Special needs trusts

### **Recommendations to the 1994 Legislative Session**

In 1994, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Power of attorney law
- Trial court unification
- Effect of joint tenancy title on marital property
- Orders to show cause and temporary restraining orders

### **Commission Plans for 1994**

During 1994, the Commission will work primarily on two major projects — trial court unification and administrative law. The Commission will study two creditors' remedies matters required by statute and may also consider other subjects as time permits.



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STATE OF CALIFORNIA

PETE WILSON, Governor

**CALIFORNIA LAW REVISION COMMISSION**

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COLIN W. WIED

November 18, 1993

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1993.

All seven bills introduced in 1993 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Senator Lockyer (special needs trusts technical amendments, concurrent resolution continuing the Commission's authority to study previously authorized topics)
- Senator Wright (miscellaneous Family Code technical corrections)
- Assembly Member Horcher (deposit of estate planning documents, litigation involving decedents)
- Assembly Member Knight (parent-child relationship for intestate succession)
- Assembly Member Speier (Family Code)

The Commission held seven two-day meetings during 1993. Meetings were held in Los Angeles and Sacramento.

Respectfully submitted,

Sanford M. Skaggs  
*Chairperson*

## ANNUAL REPORT FOR 1993

### Introduction

The California Law Revision Commission<sup>1</sup> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Committee on Rules
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 30 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 18,235 sections of the California statutes: 8,524 sections have been added, 2,967 sections amended, and 6,744 sections repealed. The Commission has submitted more than 280 recommendations to the Legislature. Approximately 96% of these recommendations have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

### **1994 Legislative Program**

In 1994, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Civil Procedure**

The Commission plans to submit the following recommendations concerning civil procedure:

- Trial court unification
- Orders to show cause and temporary restraining orders

#### **Probate Law**

The Commission plans to submit the following recommendations concerning probate law and procedure:

- Power of attorney law
- Effect of joint tenancy title on marital property

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3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

## **Major Studies in Progress**

During 1994, the Commission plans to work on two major topics: trial court unification and administrative law. The Commission will study two creditors' remedies matters as required by statute and will also consider various other subjects to the extent time permits.

### **Trial Court Unification**

The Legislature has directed the Commission to study the proposed amendment to the California Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, concerning unification of the trial courts.<sup>5</sup> The resolution requires recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment, and further recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.

The Commission is giving this study highest priority. The Commission has suspended work on all other studies, except to wrap up projects that are currently on the verge of completion. The study will consume all available Commission resources until February 1, 1994. If SCA 3 is adopted by the voters at the June 1994 primary, the study will further demand that all of the Commission's resources for the duration of 1994 and possibly early 1995 be devoted to development of recommendations for statutory changes that may be necessitated by trial court unification.

The Commission has commenced work on the first phase of this study, developing recommendations concerning the appropriate composition of the constitutional amendment. The Judicial Council has made its resources available to the Commission on this project, which has expedited the Commission's work. The Commission will circulate a tentative recommendation on the matter in late 1993, and will finalize its recommendations to the Legislature in January 1994.

The work required for the statutory implementation phase of the study will be much more substantial than the work required for the

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5. The referral is made in SCR 26, which was adopted unanimously by the Legislature as 1993 Cal. Stat. res. ch. 96.

constitutional amendment phase. In order to complete the required recommendations in a timely fashion, the Commission must begin work on the statutory implementation phase immediately. If SCA 3 is rejected by the voters, the Commission will abandon the statutory implementation work and reactivate its other priority studies.

### **Administrative Law**

The Commission is giving next priority to the study of administrative law. However, the demands of the study of trial court unification under SCA 3 have caused the Commission to suspend work on the administrative law study. Whether the Commission will be able to reactivate this study during 1994 will depend largely on whether SCA 3 is adopted by the voters at the June 1994 primary election. If it is adopted, it is unlikely that the Commission will be able to conclude work on any phase of the administrative law study during 1994.

The Commission has divided the study into four phases: (1) administrative adjudication, (2) judicial review, (3) administrative rulemaking, and (4) nonjudicial oversight.

The Commission has made substantial progress on the administrative adjudication phase of the study. The Commission's objective is to prepare a new administrative adjudication statute to govern constitutionally and statutorily required administrative hearings of all state agencies, with the exception of the Legislature, the courts and judicial branch, the Governor and Governor's office, and the University of California. The Commission issued a tentative recommendation on the matter for review and comment by interested persons, organizations, and agencies during 1993, and has commenced review of their comments. The Commission has yet to complete review of the comments, make necessary revisions and conforming changes in draft language, and promulgate a final recommendation to the Legislature.

The Commission has also begun work on judicial review of agency action. It has considered two background studies prepared by its consultant, Professor Michael Asimow, on "Judicial Review of Administrative Decision: Standing and Timing" (September 1992) and "The Scope of Judicial Review of Administrative

Action” (January 1993). The Commission has received a third and final study prepared by Professor Asimow on this subject, “A Modern Judicial Review Statute to Replace Administrative Mandamus” (November 1993).

### **Creditors’ Remedies**

Pursuant to specific statutory requirements, the Commission will study and make recommendations concerning two creditors’ remedies matters:

**Exemptions from enforcement of judgments.** The Enforcement of Judgments Law was enacted in 1982 on recommendation of the Commission<sup>6</sup> and became operative on July 1, 1983. Code of Civil Procedure Section 703.120 requires the Commission to review exemptions every 10 years and recommend changes in exempt amounts.

**Experience under 1990 attachment revisions** The Commission is required to study the experience under 1990 amendments to the Attachment Law permitting attachment in cases where the obligation is secured by a lien on personal property or commercial fixtures, in the amount of the difference between the debt and the security interest.<sup>7</sup> The Commission’s report concerning the years 1991-93, along with recommendations concerning continuance or modification of the statute, is due at the end of 1994.

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6. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001 (1980); *1982 Creditors’ Remedies Legislation*, 16 Cal. L. Revision Comm’n Reports 1001 (1982).

7. See 1990 Cal. Stat. ch. 943, § 3:

The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994.

The 1990 amendments to Sections 483.010 and 483.015 are subject to a January 1, 1996, sunset provision.

The Attachment Law was enacted on Commission recommendation. See, e.g., *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm’n Reports 701 (1973); *1982 Creditors’ Remedies Legislation*, 16 Cal. L. Revision Comm’n Reports 1001, 1171 (1982).

## Probate Law

A new Probate Code was enacted in 1990 on recommendation of the Commission<sup>8</sup> and became operative on July 1, 1991. The Commission will continue to monitor the experience under the new code and make recommendations needed to correct any technical or substantive defects that come to its attention.

## Calendar of Topics for Study

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>9</sup> The Commission recommends that the following topics be deleted from its calendar of topics:

- Involuntary dismissal for lack of prosecution
- Statutes of limitation for felonies
- Modification of contracts
- Governmental liability
- Liquidated damages
- Parol evidence rule
- Pleadings in civil actions

Each of these topics has been the subject of comprehensive legislation enacted on Commission recommendation, and none has been the subject of a follow-up Commission recommendation for at least a decade. The Commission does not intend to do further work on any of these topics, and recommends that they be deleted from its calendar.

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8. 1990 Cal. Stat. ch. 79. See also 1990 Cal. Stat. ch. 710, § 46 (amending 1990 Cal. Stat. ch. 79, § 37); see also *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

9. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1993 Cal. Stat. res. chs. 31, 96. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.



## Topics for Future Consideration

The Commission recommends that it be authorized to study one new topic:

### **Tolling Statute of Limitations While Defendant Is Out of State**

Section 351 of the Code of Civil Procedure provides that statutes of limitations are tolled while the defendant is out of state. This 1872 provision predates long-arm service and jurisdiction concepts now embodied in California law.<sup>10</sup> The section should be reviewed to determine whether it requires revision to bring it into conformity with modern service and jurisdiction provisions.

## Function and Procedure of Commission

The principal duties of the Commission<sup>11</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>12</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>13</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a rule, the Commission may study only

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10. See Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639 (1992).

11. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

12. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

13. See Gov't Code § 8288. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290.

topics that the Legislature, by concurrent resolution, authorizes it to study.<sup>14</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>15</sup>

The Commission's work on a recommendation begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Use of expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>16</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>17</sup>

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14. See Gov't Code § 8293.

15. See Gov't Code § 8298.

16. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

17. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and are frequently revised by the Commission in later reports to reflect amendments made in the legislative process.<sup>18</sup> The reports provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>19</sup>

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>20</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>21</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is

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n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

18. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

19. For examples of such reports, see Appendices 4-6, 8, and 10 in this Annual Report. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

20. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983). Commission Comments are published by Bancroft-Whitney and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers.

21. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>22</sup>

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>23</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>24</sup>

The reports, recommendations, and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>25</sup>

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22. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

23. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications. For price list, see "Commission Publications" *infra*.

24. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

25. See "Commission Publications" *infra*.

## Personnel of Commission

As of November 19, 1993, the following persons were members of the Law Revision Commission:

### Members Appointed by Governor<sup>26</sup>

	<i>Term Expires</i>
Sanford M. Skaggs, Walnut Creek <i>Chairperson</i>	October 1, 1993
Daniel M. Kolkey, Los Angeles <i>Vice Chairperson</i>	October 1, 1995
Christine W.S. Byrd, Los Angeles	October 1, 1993
Arthur K. Marshall, Los Angeles	October 1, 1995
Edwin K. Marzec, Santa Monica	October 1, 1995
Forrest A. Plant, Sacramento	October 1, 1993
Colin W. Wied, San Diego	October 1, 1995

### Legislative Members<sup>27</sup>

Assembly Member Terry Friedman, Sherman Oaks  
Senator Bill Lockyer, Hayward

### Legislative Counsel<sup>28</sup>

Bion M. Gregory, Sacramento

Effective September 1, 1993, the Commission elected Sanford M. Skaggs as Chairperson (succeeding Arthur K. Marshall), and Daniel M. Kolkey as Vice Chairperson (succeeding Sanford M. Skaggs). The terms of the new officers end August 31, 1994.

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26. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

27. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

28. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

In January 1992, three new Commissioners were appointed. Christine W.S. Byrd succeeded Brad R. Hill. Daniel M. Kolkey succeeded Ann E. Stodden, and Colin W. Wied succeeded Roger Arnebergh.

As of November 1, 1993, the following persons were on the Commission's staff:

### *Legal*

Nathaniel Sterling  
*Executive Secretary*

Barbara S. Gaal  
*Staff Counsel*

Stan Ulrich  
*Assistant Executive Secretary*

Robert J. Murphy  
*Staff Counsel*

### *Secretarial*

Victoria V. Matias  
*Composing Technician*

In April 1993, Pamela K. Mishey, on the legal staff since August 1991, left for another position, in the face of additional budget reductions.

In September 1993, Barbara S. Gaal was appointed to a half-time position on the Commission's legal staff.

Beginning in October 1993, the Commission staff has been assisted by a volunteer attorney, Helen Mell of Mountain View. Beginning in November 1993, Carlton X. Osborne, a student at Stanford Law School, was employed as a student legal assistant.

## **Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1993-94 fiscal year is \$399,000. This represents a reduction of 15% from the 1992-93 fiscal year and a reduction of 40% over the past three years.

In order to remain productive within the limits of the reduced budget allocation, the Commission has substantially reduced its staffing and revised its operations. The Commission now imposes a charge for copies of its materials to cover reproduction and ship-

ping costs. The Commission has reduced the frequency of its meetings to limit travel expenses and other associated meeting costs.

The Commission has eliminated one attorney position, its administrative assistant position, two secretarial positions, and temporary assistance. The Commission now functions with two full-time attorneys (including its Executive Secretary), two part-time attorneys, and one secretary.

The result of these reductions is that substantial burdens have been placed on the Commission's remaining staff to maintain productivity with fewer resources. The staff attorneys, for example, must do all work formerly performed by the administrative assistant and secretaries, in addition to a heavier load of legal work. Currently the work week of the Commission's full time attorneys averages about 60 hours.

All Commissioners have waived their per diem allowances for the 1993-94 fiscal year in order to minimize time-base reductions for existing staff members.

There is some mitigation from outside sources available to the Commission. The Commission receives substantial donations of necessary library materials from the legal publishing community, especially Bancroft-Whitney Company, California Continuing Education of the Bar, and West Publishing Company. The Commission receives additional library materials from other legal publishers and other law reform agencies on an exchange basis, and has access to the Stanford University Law Library. The Commission has also received assistance during 1993 from a volunteer attorney,<sup>29</sup> and pro bono assistance from the law firm of Brobeck, Phleger, and Harrison. The Commission is grateful for their contributions.

The Commission has managed to maintain its productivity despite substantial budget cuts, but this cannot continue indefinitely. The Commission's legislative programs for 1993 and 1994 reflect the strain on the Commission's resources. This trend will continue until more adequate funding is reestablished.

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29. See discussion under "Personnel of Commission" *supra*.

## **Legislative History of Recommendations Submitted to 1993 Legislative Session**

The Commission recommendations were included in seven bills and one concurrent resolution recommended for enactment at the 1993 legislative session. All seven bills were enacted and the concurrent resolution was adopted.

### **Family Code**

Assembly Bill 1500 (1993 Cal. Stat. ch. 219) was introduced by Assembly Member Speier to effectuate the Commission's recommendations on the Family Code. See *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1, 5 (1993); *Family Code: Child Custody*, 23 Cal. L. Revision Comm'n Reports 1, 15 (1993); *Family Code: Reorganization of Domestic Violence Provisions*, 23 Cal. L. Revision Comm'n Reports 1, 23 (1993). The bill was enacted after numerous technical amendments were made.<sup>30</sup> Some additional technical cleanup amendments to resolve conflicts with other bills in the 1993 legislative session were carried in Senate Bill 1068 (1993 Cal. Stat. ch. 876) authored by Senator Wright.

The new Family Code was enacted on Commission recommendation in 1992, with a January 1, 1994, operative date.<sup>31</sup> The 1993 legislation incorporated into the new code other family law measures enacted in 1992,<sup>32</sup> further revised the provisions concerning child custody and domestic violence prevention, and made numerous additional technical changes in anticipation of the new code's operative date of January 1, 1994.

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30. The report on the Family Code sets out the statute as enacted and includes revised Comments reflecting the changes made during the legislative process. See *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1 (1993).

31. See *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992); 1992 Cal. Stat. chs. 162, 163.

32. The 1992 Family Code bill (AB 2650) and conforming revision bill (AB 2641) were both made subordinate to all other 1992 family law legislation. See 1992 Cal. Stat. ch. 162, § 14; 1992 Cal. Stat. ch. 163, § 160. Thus, any provisions added to or amended in statutes such as the Family Law Act in the Civil Code had to be repealed and incorporated into the new Family Code structure before the operative date of the new code.



**Deposit of Estate Planning Documents with Attorney**

Assembly Bill 209 (1993 Cal. Stat. ch. 519) was introduced by Assembly Member Horcher to effectuate a Commission recommendation. See *Deposit of Estate Planning Documents with Attorney*, 23 Cal. L. Revision Comm'n Reports 965 (1993) (Appendix 7 *infra*). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 519 of the Statutes of 1993 (Assembly Bill 209)*, 23 Cal. L. Revision Comm'n Reports 989 (1993) (Appendix 8 *infra*).

**Parent and Child Relationship for Intestate Succession**

Assembly Bill 1137 (1993 Cal. Stat. ch. 529) was introduced by Assembly Member Knight to effectuate a Commission recommendation. See *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports 991 (1993) (Appendix 9 *infra*). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 529 of the Statutes of 1993 (Assembly Bill 1137)*, 23 Cal. L. Revision Comm'n Reports 1009 (1993) (Appendix 10 *infra*).

**Special Needs Trusts**

Senate Bill 305 (1993 Cal. Stat. ch. 978) was introduced by Senator Lockyer and included a section recommended by the Commission concerning special needs trusts. See *Report of the California Law Revision Commission on Chapter 978 of the Statutes of 1993 (Senate Bill 305)*, 23 Cal. L. Revision Comm'n Reports 959 (1993) (Appendix 4 *infra*). See also *Special Needs Trust for Disabled Minor or Incompetent Person*, 22 Cal. L. Revision Comm'n Reports 989 (1992).

**Litigation Involving Decedents**

Assembly Bill 1704 (1993 Cal. Stat. ch. 151) was introduced by Assembly Member Horcher to make technical revisions recommended by the Commission concerning litigation involving decedents. See *Report of the California Law Revision Commission on Chapter 151 of the Statutes of 1993 (Assembly Bill 1704)*, 23 Cal. L. Revision Comm'n Reports 961 (1993) (Appendix 5 *infra*). Additional technical revisions on this subject were included in Assembly Bill 2211 (1993 Cal. Stat. ch. 589), the maintenance of

the codes bill introduced by the Assembly Committee on Judiciary. See *Report of the California Law Revision Commission on Chapter 589 of the Statutes of 1993 (Assembly Bill 2211)*, 23 Cal. L. Revision Comm'n Reports 963 (1993) (Appendix 6 *infra*). See also *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992).

### **Resolution Authorizing Topics for Study**

Senate Concurrent Resolution 4 (1993 Cal. Stat. res. ch. 31), introduced by Senator Lockyer on behalf of the Senate Committee on Judiciary, continues the Commission's authority to study 26 topics previously authorized for study and adds authority requested by the Commission<sup>33</sup> to study three new topics: shareholder rights and corporate director responsibilities, unfair business practices, and the Uniform Unincorporated Nonprofit Association Act.

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>34</sup> and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding state statutes unconstitutional has been found.

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33. See *Annual Report for 1992*, 22 Cal. L. Revision Comm'n Reports 831, 844-46 (1992).

34. This study has been carried through 23 Cal. Rptr. 2d 927 (Advance Sheet No. 47, Nov. 26, 1993) and 113 S. Ct. (1992-93 Term).

## Recommendations

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized,<sup>35</sup> to study the new topic recommended for study,<sup>36</sup> and to remove seven topics from the Commission's calendar of topics.<sup>37</sup>

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35. See "Calendar of Topics Authorized for Study," Appendix 2 *infra*.

36. See "New Topic for Future Consideration" *supra*.

37. See "Calendar of Topics for Study" *supra*.



## APPENDIX 1

### STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION

#### GOVERNMENT CODE SECTIONS 8280-8297\*

##### **§ 8280. Creation**

8280. There is created in the State Government the California Law Revision Commission.

##### **§ 8281. Membership**

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms

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\* Added by 1984 Cal. Stat. ch. 1335, § 2. Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

**Note.** The provision in the third paragraph to the effect that Commission members appointed by the Governor hold office until appointment and qualification of their successors is superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

#### **§ 8282. Compensation and expenses**

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

**Note.** Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

#### **§ 8283. Chairperson**

8283. The commission shall select one of its members chairperson.

#### **§ 8284. Executive secretary**

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

**§ 8285. Employees**

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

**§ 8286. Assistance of state**

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

**§ 8287. Assistance of bar**

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

**§ 8288. Political activities of commissioners and staff**

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

**§ 8289. Duties of commission**

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

**§ 8290. Unconstitutional and impliedly repealed statutes**

8290. The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

**§ 8291. Submission and distribution of reports**

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

**Note.** Section 8291 is limited by the later-enacted rules governing distribution of state reports set out in Government Code Sections 11094-11099.



**§ 8292. Contents of reports**

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

**§ 8293. Calendar of topics**

8293. The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for the study.

**§ 8294. Printing of reports**

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

**§ 8295. Cooperation with legislative committees**

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

**§ 8296. Cooperation with bar and other associations**

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

**§ 8297. Research contracts**

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

## APPENDIX 2

### CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics authorized for study, the topics listed below.\* Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolutions, see 1993 Cal. Stat. res. chs. 31, 96.

**1. Creditors' remedies.** Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 15-16 (1957).)

**2. Probate Code.** Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**3. Real and personal property.** Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic. Expanded in 1988 Cal Stat. res. ch. 81.)

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\* For additional matters authorized for Commission study, see *supra* notes 7 & 9. For a list of topics recommended for removal from the calendar, see "Calendar of Topics for Study" *supra*.

**4. Family law.** Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

**5. Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

**6. Class actions.** Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

**7. Offers of compromise.** Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

**8. Discovery in civil cases.** Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

**9. Procedure for removal of invalid liens.** Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**10. Special assessment liens for public improvements.** Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**11. Injunctions.** Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

**12. Involuntary dismissal for lack of prosecution.** Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

**13. Statutes of limitation for felonies.** Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

**14. Rights and disabilities of minors and incompetent persons.** Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

**15. Child custody, adoption, guardianship, and related matters.** Whether the law relating to custody of children, adoption, guardianship,

freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956, at 29-31 (1957).)

**16. Evidence.** Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

**17. Arbitration.** Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

**18. Modification of contracts.** Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 21 (1957).)

**19. Governmental liability.** Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

**20. Inverse condemnation.** Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

**21. Liquidated damages.** Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

**22. Parol evidence rule.** Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

**23. Pleadings in civil actions.** Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**24. Administrative law.** Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

**25. Attorney's fees.** Whether there should be changes in the law relating to the payment and the shifting of attorney's fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

**26. Family Relations Code.** Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1989 Cal. Stat. res. ch. 70.)

**27. Uniform Unincorporated Nonprofit Association Act.** Whether the Uniform Unincorporated Nonprofit Association Act, or parts of the Uniform Act, and related matters should be adopted in California. (Authorized by 1993 Cal. Stat. res. ch. 31.)

**28. Unfair Business Practices.** Whether the law governing unfair competition litigation under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code should be revised to clarify the scope of the chapter and to resolve procedural problems in litigation under the chapter, including the res judicata and collateral estoppel effect on the public of a judgment between the parties to the litigation, and related matters. (Authorized by 1993 Cal. Stat. res. ch. 31.)

**29. Shareholders' Rights and Corporate Director Responsibilities.** Whether the requirement of paragraph (2) of subdivision (b) of Section 800 of the Corporations Code that the plaintiff in a shareholder's derivative action must allege the plaintiff's efforts to secure board action or the reasons for not making the effort, and the standard under Section 309 of the Corporations Code for protection of a director from liability for a good faith business judgment, and related matters, should be revised. (Authorized by 1993 Cal. Stat. res. ch. 31.)

**30. Trial Court Unification.** The proposed amendment to the State Constitution contained in SCA 3 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the trial courts, with recommendations to be forwarded to the Legislature by February 1, 1994, pertaining to the appropriate composition of the amendment and further recommendation to be reported pertaining to statutory changes that may be necessitated by court unification. (Authorized by 1993 Cal. Stat. res. ch. 96.)

## APPENDIX 3

### LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956, at 13 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports, at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports, at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports, at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports, at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports, at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports, at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports, at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports, at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports, at J-1 (1957)	No legislation recommended
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports, at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports, at L-1 (1957)	Not enacted
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports, at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 29 (1959)	No legislation recommended
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports, at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425



Recommendation	Action by Legislature
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959)	Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959)	Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961)	Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961)	Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , Cal. L. Revision Comm'n Reports, at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i> ) which was enacted

Recommendation	Action by Legislature
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961)	Not enacted
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653

Recommendation	Action by Legislature
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132

Recommendation	Action by Legislature
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828

Recommendation	Action by Legislature
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i> ) which was enacted

Recommendation	Action by Legislature
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976)	Enacted. 1977 Cal. Stat. ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275
93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i> ) which was enacted
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted

Recommendation	Action by Legislature
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155
109. <i>Attachment Law — Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151

Recommendation	Action by Legislature
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i>
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028)
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 177
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050



Recommendation	Action by Legislature
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600
135. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511

Recommendation	Action by Legislature
139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92. Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i> )
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72

Recommendation	Action by Legislature
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982), 17 Cal. L. Revision Comm'n Reports 863 (1984)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204
160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i> )
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156

Recommendation	Action by Legislature
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463
167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted
168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i> ); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i> )
172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243

Recommendation	Action by Legislature
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care), 602 (general power of attorney)
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157

Recommendation	Action by Legislature
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923

Recommendation	Action by Legislature
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
223. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191–1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113

Recommendation	Action by Legislature
224. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544; Balance enacted. 1990 Cal. Stat. ch. 140
231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990)	Enacted. 1989 Cal. Stat. ch. 21
232. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-242 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982
235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)	Enacted. 1990 Cal. Stat. ch. 79
236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)	Enacted. 1990 Cal. Stat. ch. 986
237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)	Enacted. 1990 Cal. Stat. ch. 986



Recommendation	Action by Legislature
238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)	Enacted. 1990 Cal. Stat. ch. 324
239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)	Enacted. 1990 Cal. Stat. ch. 710
240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)	Enacted. 1990 Cal. Stat. ch. 710
241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)	Enacted. 1990 Cal. Stat. ch. 710
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990)	Enacted. 1990 Cal. Stat. ch. 710
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)	Not enacted
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307
250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)	Enacted. 1991 Cal. Stat. ch. 67

Recommendation	Action by Legislature
251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)	Enacted. 1991 Cal. Stat. ch. 67
252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)	Enacted. 1991 Cal. Stat. ch. 156
253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2601 (1990)	Enacted. 1991 Cal. Stat. ch. 896
254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992)	Enacted. 1992 Cal. Stat. ch. 178
255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992)	Enacted. 1992 Cal. Stat. ch. 178
261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572
262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990)	Enacted. 1992 Cal. Stat. ch. 178

Recommendation	Action by Legislature
263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990)	Enacted. 1991 Cal. Stat. ch. 1055
266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990)	Enacted. 1991 Cal. Stat. ch. 82
267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991)	Enacted. 1991 Cal. Stat. ch. 156
268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991)	Enacted. 1992 Cal. Stat. ch. 30
269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991)	Enacted. 1992 Cal. Stat. ch. 283
270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991)	Enacted. 1992 Cal. Stat. ch. 51
271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991)	Enacted. 1992 Cal. Stat. ch. 178
272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991)	Enacted. 1992 Cal. Stat. ch. 178
273. <i>Preliminary Distribution Without Court Supervision</i> 21 Cal. L. Revision Comm'n Reports 209 (1991)	Enacted. 1992 Cal. Stat. ch. 178
274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572
275. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992)	Enacted. 1992 Cal. Stat. ch. 178
276. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992)	Enacted. 1992 Cal. Stat. chs. 162, 163

Recommendation	Action by Legislature
277. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992)	Enacted. 1992 Cal. Stat. ch. 355
278. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990)	Enacted. 1992 Cal. Stat. ch. 178
279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993)	Enacted. 1993 Cal. Stat. ch. 219
280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993)	Enacted. 1993 Cal. Stat. ch. 219
281. <i>Family Code: Reorganization of Domestic Violence Provisions</i> , 23 Cal. L. Revision Comm'n Reports 1, 23 (1993)	Enacted. 1993 Cal. Stat. ch. 219
282. <i>Deposit of Estate Planning Documents with Attorney</i> , 23 Cal. L. Revision Comm'n Reports 965 (1993)	Enacted. 1993 Cal. Stat. ch. 519
283. <i>Parent and Child Relationship for Intestate Succession</i> , 23 Cal. L. Revision Comm'n Reports 991 (1993)	Enacted. 1993 Cal. Stat. ch. 529
284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993)	Not yet introduced

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## APPENDIX 4

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 978 OF THE STATUTES OF 1993 (SENATE BILL 305)

Chapter 978 of the Statutes of 1993 was introduced as Senate Bill 305 by Senator Bill Lockyer and included a section recommended by the California Law Revision Commission relating to special needs trusts. For additional background, see *Special Needs Trust for Disabled Minor or Incompetent Person*, 22 Cal. L. Revision Comm'n Reports 989 (1992). The comment to the section in Chapter 978 recommended by the Commission is set out below.

#### **Prob. Code § 3611 (amended). Order of court**

**Comment.** Subdivision (c) of Section 3611 is amended to require a hearing before the court may order money to be paid to a special needs trust under this section, and to require notice to affected state agencies. This amendment conforms Section 3611(c) to Section 3602(f).



## APPENDIX 5

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 151 OF THE STATUTES OF 1993 (ASSEMBLY BILL 1704)

Chapter 151 of the Statutes of 1993 was introduced as Assembly Bill 1704 by Assembly Member Paul V. Horcher on recommendation of the California Law Revision Commission to make technical corrections in legislation concerning litigation involving decedents. For additional background, see *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992). Comments to the sections in Chapter 151 are set out below.

**Civ. Code § 1363 (amended). Association to manage common interest development**

**Comment.** Section 1363 is amended to delete revisions in subdivision (c) made by Section 1.5 of Chapter 1332 of the Statutes of 1992. The matter is governed by Code of Civil Procedure Section 383, formerly Code of Civil Procedure Section 374, as amended by Section 1 of Chapter 1283 of the Statutes of 1992.

**Code Civ. Proc. § 366.2 (amended). Limitations period after death of person against whom action may be brought**

**Comment.** Section 366.2 is amended to make clear it is subject to the trust claims procedure as well as the probate claims procedure. This does not change, but clarifies, existing law.

Under these procedures, a creditor's claim may be extinguished before expiration of the one-year limitations period by failure to file a claim. Prob. Code §§ 9002 (probate), 19004 (trust). Conversely, filing of a claim tolls the one-year limitations period. Prob. Code §§ 9352 (probate), 19253 (trust).

**Code Civ. Proc. § 374 (renumbered). Association to manage common interest development**

**Comment.** Former Section 374 is renumbered as Section 383 for organizational purposes.

**Code Civ. Proc. § 383 (as renumbered). Association to manage common interest development**

**Comment.** Section 383 is renumbered from Section 374 for organizational purposes.

**Code Civ. Proc. § 411.36 (amended). Action involving common interest development association**

**Comment.** Section 411.36 is amended to correct a section reference.



## APPENDIX 6

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 589 OF THE STATUTES OF 1993 (ASSEMBLY BILL 2211)

Chapter 589 of the Statutes of 1993 was introduced as Assembly Bill 2211 by the Assembly on Judiciary and included four technical amendments recommended by the California Law Revision Commission. Comments to the sections in Chapter 589 recommended by the Commission are set out below.

**Code Civ. Proc. § 473.1 (technical amendment). Court control of attorney's practice**

**Comment.** Section 473.1 is amended to substitute a reference to the provisions that replaced former Sections 581a and 583. This is a technical, nonsubstantive change.

**Lab. Code § 3852 (technical amendment). Rights of employee's heirs against third person**

**Comment.** Section 3852 is amended to substitute a reference to the provision that replaced the relevant part of former Code of Civil Procedure Section 377. This is a technical, nonsubstantive change.

**Prob. Code § 8572 (technical amendment). Secretary of State as attorney for service**

**Comment.** Subdivision (b) of Section 8572 is amended to substitute a reference to the provision that replaced the relevant part of former Code of Civil Procedure Section 385. This is a technical, nonsubstantive change.

**Prob. Code § 8574 (technical amendment). Manner of service on Secretary of State**

**Comment.** Subdivision (a) of Section 8574 is amended to substitute a reference to the provision that replaced the relevant part of former Code of Civil Procedure Section 385. This is a technical, nonsubstantive change.



**APPENDIX 7**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

**Deposit of Estate Planning  
Documents with Attorney**

January 1993

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Deposit of Estate Planning Documents with Attorney*, 23 Cal. L. Revision Comm'n Reports 965 (1993).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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FORREST A. PLANT

COLIN W. WIED

January 28, 1993

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation clarifies rights and duties where an estate planning document has been deposited with an attorney for safekeeping. If the attorney is unable to return the document because the attorney cannot find the depositor, the attorney would be allowed to transfer the document to another attorney or the superior court clerk of the county of the depositor's last known domicile. Notice of a transfer must be given to the State Bar.

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



## DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

Wills and other estate planning documents are often left with the attorney who drafted them.<sup>1</sup> This creates a bailment.<sup>2</sup> A bailee ordinarily has no authority to transfer the property being held to someone else without consent of the bailor.<sup>3</sup> Thus when an attorney accepts an estate planning document for safekeeping, the attorney must continue to hold the document indefinitely if the depositor cannot be found. This creates a serious problem for an estate planning attorney who wants to retire, resign, become inactive, or change to some other kind of practice.

The Commission recommends legislation to permit an attorney who is holding an estate planning document for safekeeping and cannot find the depositor to transfer the document to another attorney or the clerk of the superior court of the county of the depositor's last known residence,<sup>4</sup> and to require the attorney to give notice to the State Bar.<sup>5</sup> The recommended legislation has the following features:<sup>6</sup>

(1) The attorney must use ordinary care for preservation of the document, whether or not consideration is given, and must keep the document in a safe, vault, safe deposit box, or other

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1. See California Will Drafting Practice § 2.25, at 62-63 (Cal. Cont. Ed. Bar 1982).

2. 8 Am. Jur. 2d *Bailments* § 4 (1980).

3. 8 Am. Jur. 2d *Bailments* § 97 (1980).

4. Under existing law, the superior court clerk receives and stores wills of deceased testators: The custodian of the will must deliver it to the clerk of the superior court of the county in which the decedent's estate may be administered. Prob. Code § 8200.

5. Under existing law, an attorney who intends to go out of practice must give notice of cessation of law practice to the State Bar. Bus. & Prof. Code §§ 6180, 6180.1.

6. The recommended legislation was developed from a proposal approved by the State Bar Conference of Delegates in 1988.

secure place where it will be reasonably protected against loss or destruction.

(2) The attorney may give written notice to the depositor that the depositor must keep the attorney advised of any changes of address. If the depositor fails to do this and as a result the attorney cannot return a deposited document, the attorney, and any successor attorney who accepts a transfer of the document, need use only slight care for its preservation, the same as for a gratuitous depositary under existing law.<sup>7</sup>

(3) The attorney is not liable for loss or destruction of the document if the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document.

(4) The depositor need not compensate the attorney for holding the document unless so provided in a written agreement.

(5) The attorney has no lien on the document, even if provided by agreement.<sup>8</sup>

(6) A depositor may terminate a deposit on demand, and the attorney must deliver the document to the depositor.<sup>9</sup>

(7) The attorney may terminate a deposit by personal delivery of the document to the depositor or by the method agreed on by the depositor and the attorney.

(8) If the attorney is unable to deliver the document to the depositor and does not have actual notice that the depositor has died, the attorney may mail notice to reclaim the document to the depositor's last known address. If the depositor

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7. Civ. Code § 1846.

8. This is contrary to the general law of depositaries, which allows a lien for costs. Civ. Code § 1856.

9. This is consistent with Civil Code Section 1822. The recommended legislation also would amend Probate Code Section 2586 (substituted judgment) to provide that if the depositor has a conservator of the estate, the court may order that the depositor's estate planning documents be delivered to some other custodian for safekeeping.



fails to reclaim the document within 90 days, the attorney may transfer the document to another attorney or to the clerk of the superior court of the county of the depositor's last known domicile, and must file a notice of the transfer with the State Bar.

(9) If a document is transferred to a superior court clerk, the clerk may microfilm the document and destroy the original.<sup>10</sup> The clerk's fee for accepting a transfer of an estate planning document is the general fee provided by statute for filing and indexing papers.<sup>11</sup> The clerk's fee for searching for an estate planning document is \$1.75 for each year searched.

(10) A successor attorney who accepts a document for safekeeping is not liable for failure to verify the completeness or correctness of information or documents received from a predecessor depository.

(11) After the depositor's death, the attorney may terminate the deposit by delivering the document to the depositor's personal representative, or to the trustee in the case of a trust or court clerk in the case of a will.

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10. The recommended legislation also authorizes the superior court clerk to microfilm wills delivered pursuant to Probate Code Section 8200 after the testator's death, and to destroy the original, if the clerk has held the will for at least ten years. Destruction of the original will does not prevent its admission to probate. See Prob. Code § 8223.

11. The current fee is \$2.25. Gov't Code § 26850.



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## RECOMMENDED LEGISLATION

### **Prob. Code §§ 700-735 (added). Deposit of estate planning documents with attorney**

## PART 15. DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

### CHAPTER 1. DEFINITIONS

#### **§ 700. Application of definitions**

700. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

**Comment.** Section 700 is new.

#### **§ 701. Attorney**

701. “Attorney” means an individual licensed to practice law in this state.

**Comment.** Section 701 is new. Although the depository is the individual attorney, liability for failing to maintain an adequate standard of care may be imposed on the attorney’s law partnership or law corporation under traditional rules of vicarious liability. See 2 B. Witkin, *Summary of California Law Agency and Employment* § 115, at 109-11 (9th ed. 1987); 9 B. Witkin, *Summary of California Law Partnership* § 38, at 434-35 (9th ed. 1989).

#### **§ 702. Deposit**

702. “Deposit” means delivery of a document by a depositor to an attorney for safekeeping or authorization by a depositor for an attorney to retain a document for safekeeping.

**Comment.** Section 702 is new.

**§ 703. Depositor**

703. “Depositor” means a natural person who deposits the person’s document with an attorney.

**Comment.** Section 703 is new. The definition of “depositor” in Section 703 does not preclude the person whose document is deposited from using an agent, such as an attorney-in-fact, to make the deposit.

**§ 704. Document**

704. “Document” means any of the following:

(a) A signed original will, declaration of trust, trust amendment, or other document modifying a will or trust.

(b) A signed original power of attorney.

(c) A signed original nomination of conservator.

(d) Any other signed original instrument that the attorney and depositor agree in writing to make subject to this part.

**Comment.** Section 704 is new. “Will” includes a codicil. Section 88.

**CHAPTER 2. DUTIES AND LIABILITIES OF ATTORNEY****§ 710. Attorney’s duty of ordinary care**

710. If a document is deposited with an attorney, the attorney, and a successor attorney that accepts transfer of the document, shall use ordinary care for preservation of the document on and after July 1, 1994, whether or not consideration is given, and shall hold the document in a safe, vault, safe deposit box, or other secure place where it will be reasonably protected against loss or destruction.

**Comment.** Section 710 is new. Under Section 710, an attorney must use ordinary care for preservation of the document deposited. This applies the rule of Civil Code Section 1852 (deposit for hire) to the attorney-depositary, whether or not consideration is given. This is a departure from Civil Code Section 1846, under which a gratuitous depositary need only use slight care for preservation of the property deposited.

The duty imposed by Section 710 to hold the document in a safe, vault, safe deposit box, or other secure place is a reasonable one, and allows reasonable periods for the document to be out of safekeeping for the purpose of examination or delivery in appropriate circumstances. At all

times the document should be reasonably protected against loss or destruction, although what is reasonable may vary with the circumstances.

Although Section 710 applies to attorneys who are holding documents on July 1, 1994, an attorney is not liable for action taken before that date that was proper when the action was taken. Section 3.

For an exception to the standard of care provided in Section 710, see Section 716 (slight care after specified steps taken).

### **§ 711. Notice on loss or destruction of document**

711. If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor by one of the following methods:

(a) By mailing the notice to the depositor's last known address.

(b) By the method most likely to give the depositor actual notice.

**Comment.** Section 711 is new. Even though a will is lost or destroyed, it still may be proven and admitted to probate. See Section 8223.

### **§ 712. Nonliability for loss or destruction of document**

712. Notwithstanding failure of an attorney to satisfy the standard of care required by Section 710 or 716, the attorney is not liable for loss or destruction of the document if the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document.

**Comment.** Section 712 is new. Even though a will is lost or destroyed, it still may be proven and admitted to probate. See Section 8223.

### **§ 713. No duty to verify contents of document or provide continuing legal services**

713. The acceptance by an attorney of a document for deposit imposes no duty on the attorney to do either of the following:

(a) Inquire into the content, validity, invalidity, or completeness of the document, or the correctness of any information in the document.

(b) Provide continuing legal services to the depositor or to any beneficiary under the document. This subdivision does not affect the duty, if any, of the drafter of the document to provide continuing legal services to any person.

**Comment.** Section 713 is new. Section 713 does not relieve the drafter of the document from the duty of drafting competently.

**§ 714. Payment of compensation and expenses; no lien on document**

714. (a) If so provided in a written agreement signed by the depositor, an attorney may charge the depositor for compensation and expenses incurred in safekeeping or delivery of a document deposited with the attorney.

(b) No lien arises for the benefit of an attorney on a document deposited with the attorney, whether before or after its transfer, even if provided by agreement.

**Comment.** Section 714 is new. Subdivision (b) is a departure from Civil Code Section 1856 (depository's lien).

**§ 715. Attorney's notice to client**

715. An attorney may give written notice to a depositor, and obtain written acknowledgment from the depositor, in the following form:

NOTICE AND ACKNOWLEDGMENT

To: \_\_\_\_\_

(Name of depositor)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, state, ZIP)

I have accepted your will or other estate planning document for safekeeping. I must use ordinary care for preservation of the document.



You must keep me advised of any change in your address shown above. If you do not and I cannot return this document to you when necessary, I will no longer be required to use ordinary care for preservation of the document, and I may transfer it to another attorney, or I may transfer it to the clerk of the superior court of the county of your last known domicile, and give notice of the transfer to the State Bar of California.

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(Signature of attorney)

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(Address of attorney)

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(City, state, ZIP)

My address shown above is correct. I understand that I must keep you advised of any change in this address.

Dated: \_\_\_\_\_

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(Signature of depositor)

**Comment.** Section 715 is new. By giving the notice and obtaining the acknowledgment provided by this section, the attorney's duty of care may be reduced to slight care if the requirements of Section 716 are satisfied. See also Section 731 (mailing document to depositor's last known address).

#### **§ 716. Reduced standard of care**

716. Notwithstanding Section 710, if an attorney has given written notice to the depositor, and has obtained written acknowledgment from the depositor, in substantially the form provided in Section 715, and the requirements of subdivision (a) of Section 732 are satisfied, the attorney, and a successor attorney that accepts transfer of a document, shall use at least

slight care for preservation of a document deposited with the attorney.

**Comment.** Section 716 is new. The “slight care” standard of Section 716 is the same as the standard of care of a gratuitous depositary under Civil Code Section 1846.

## CHAPTER 3. TERMINATION OF DEPOSIT

### Article 1. Termination by Depositor

#### § 720. Termination on demand

720. A depositor may terminate a deposit on demand, in which case the attorney shall deliver the document to the depositor.

**Comment.** Section 720 is new, and is consistent with Civil Code Section 1822, except that under Section 714 no lien is permitted against the document deposited.

If the depositor has an attorney in fact acting under a statutory form power of attorney that confers general authority with respect to estate transactions, the attorney in fact may terminate the deposit. See Civ. Code § 2493.

If the depositor has a conservator of the estate, the court may order the attorney to deliver the document to the court for examination, and for good cause may order that the document be delivered to some other custodian for safekeeping. Section 2586.

### Article 2. Termination by Attorney

#### § 730. Attorney may terminate deposit only as provided in this article

730. An attorney with whom a document has been deposited, or to whom a document has been transferred pursuant to this article, may terminate the deposit only as provided in this article.

**Comment.** Section 730 is new. The methods by which an attorney may terminate a deposit under this article are provided in Sections 731-735.

**§ 731. Termination by delivery, mailing, or as agreed**

731. An attorney may terminate the deposit by one of the following methods:

(a) Personal delivery of the document to the depositor.

(b) Mailing the document to the depositor's last known address, by registered or certified mail with return receipt requested, and receiving a signed receipt.

(c) The method agreed on by the depositor and attorney.

**Comment.** Section 731 is new. The depositor's last known address may be shown in a notice and acknowledgment under Section 715, in the depositor's advice of change of address to the attorney, or otherwise.

Section 731 provides some of the ways an attorney may terminate a deposit. An attorney may also terminate a deposit as provided in Section 732 or, if applicable, Section 734.

**§ 732. Termination by transferring document to another attorney or superior court clerk**

732. (a) An attorney may terminate a deposit under this section if the attorney has mailed notice to reclaim the document to the depositor's last known address and the depositor has failed to reclaim the document within 90 days after the mailing.

(b) Subject to subdivision (e), an attorney may terminate a deposit under this section by transferring the document to either of the following:

(1) Another attorney. All documents transferred under this paragraph shall be transferred to the same attorney.

(2) The clerk of the superior court of the county of the depositor's last known domicile. The attorney shall advise the clerk that the document is being transferred pursuant to Probate Code Section 732.

(c) An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney may charge a fee for receiving a document under this section.

(d) Transfer of a document by an attorney under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the transfer.

(e) If the document is a will and the attorney has actual notice that the depositor has died, the attorney may terminate a deposit only as provided in Section 734.

**Comment.** Section 732 is new. The depositor's last known address may be shown in a notice and acknowledgment under Section 715, in the depositor's advice of change of address to the attorney, or otherwise.

Section 732 provides one way an attorney may terminate a deposit. An attorney may also terminate a deposit as provided in Section 731 or, if applicable, Section 734.

By permitting an attorney to transfer a document to another depository, Section 732 departs from the common law of bailments under which a depository ordinarily has no authority to transfer the property to someone else. See 8 Am. Jur. 2d *Bailments* § 97 (1980).

Under Section 732, if an attorney transfers estate planning documents to another attorney, all documents must go to the same attorney. Presumably, the transferring attorney will use this procedure at the time the transferring attorney retires or ceases to practice in the estate planning area. See also Bus. & Prof. Code §§ 6180, 6180.1 (notice of cessation of law practice required when attorney goes out of practice).

There is no limit on the number of times an attorney may transfer estate planning documents to the superior court clerk under Section 732. The fee for transferring an estate planning document to the superior court clerk under subdivision (b) is \$2.25. Gov't Code § 26827.6.

See also Sections 1215-1217 (mailing of notice).

### § 733. Notice to State Bar

733. (a) An attorney transferring one or more documents under Section 732 shall mail notice of the transfer to the State Bar of California. The notice shall contain all of the following information:

- (1) The name of the depositor.
- (2) The date of the transfer.

(3) The name, address, and State Bar number of the transferring attorney.

(4) Whether any documents are transferred to an attorney, and the name, address, and State Bar number of the attorney to whom the documents are transferred.

(5) Whether any documents are transferred to a superior court clerk.

(b) The State Bar shall record only one notice of transfer for each transferring attorney. The State Bar shall prescribe the form for the notice of transfer. On request by any person, the State Bar shall give that person information in the notice of transfer. At its sole election, the State Bar may give the information orally or in writing.

**Comment.** Section 733 is new.

#### **§ 734. Termination after death of depositor**

734. (a) In cases not governed by subdivision (b) or (c), after the death of the depositor an attorney may terminate a deposit by personal delivery of the document to the depositor's personal representative.

(b) If the document is a will and the attorney has actual notice that the depositor has died but does not have actual notice that a personal representative has been appointed for the depositor, an attorney may terminate a deposit only as provided in Section 8200.

(c) If the document is a trust, after the death of the depositor an attorney may terminate a deposit by personal delivery of the document either to the depositor's personal representative or to the trustee named in the document.

**Comment.** Section 734 is new. Subdivisions (a) and (c) are permissive, but subdivision (b) is mandatory. If subdivision (b) does not apply, an attorney may terminate a deposit, for example, by the method agreed on by the depositor and attorney. Section 731.

As used in Section 734, "personal representative" includes a successor personal representative and a personal representative appointed in

another state. Section 58. “Trustee” includes a successor trustee (Section 84), and “will” includes a codicil (Section 88).

**§ 735. Deceased or incompetent attorney**

735. (a) If the attorney is deceased or lacks legal capacity, a deposit may be terminated as provided in this article by the attorney’s law partner, by a shareholder of the attorney’s law corporation, or by a lawyer or nonlawyer employee of the attorney or the attorney’s partnership or corporation.

(b) If the attorney lacks legal capacity and there is no person to act under subdivision (a), a deposit may be terminated by the conservator of the attorney’s estate or by an attorney in fact acting under a durable power of attorney. A conservator of the attorney’s estate may act without court approval.

(c) If the attorney is deceased and there is no person to act under subdivision (a), a deposit may be terminated by the attorney’s personal representative.

(d) If a person authorized under this section terminates a deposit as provided in Section 732, the person shall give the notice required by Section 733.

**Comment.** Section 735 is new.

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## CONFORMING REVISIONS

### **Gov't Code § 26810 (added). Microfilming estate planning documents; destruction of originals**

26810. (a) The clerk of the superior court may cause the following documents to be photographed, microphotographed, photocopied, electronically imaged, or otherwise reproduced on film and stored in that form:

(1) A document transferred to the clerk under Section 732 of the Probate Code.

(2) A will delivered to the clerk of the superior court under Section 8200 of the Probate Code if the clerk has held the will for at least ten years.

(b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner that meets the minimum standards or guidelines recommended by the American National Standards Institute or the Association for Information and Image Management. All these photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall be stored in a manner and place that reasonably assures their preservation indefinitely against loss, theft, defacement, or destruction.

(c) Before proof of death of the maker of a document or will referred to in subdivision (a), the photographs, microphotographs, photocopies, and electronic images shall be confidential, and shall be made available only to the maker. After proof of death of the maker of the document or will by a certified copy of the death certificate, the photographs, microphotographs, photocopies, and electronic images shall be public records.

(d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to the reproduction authorized by this section.

(e) Upon making the reproduction authorized by this section, the clerk of the superior court may destroy the original document.

**Comment.** Section 26810 is new and is drawn from other comparable provisions of state law. See Com. Code § 9407.1; Gov't Code §§ 27322.2, 27322.4, 71007; Health & Safety Code § 10036.

**Gov't Code § 26827.6 (added). Fee for filing and searching estate planning document**

26827.6. (a) The fee for receiving and storing a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under Section 26850 for filing and indexing papers.

(b) The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under Section 26854 for searching records or files.

**Comment.** Section 26827.6 is new. The fee for filing and indexing papers under Section 26850 is \$2.25. The fee for searching under Section 26854 is \$1.75 per year searched.

**Prob. Code § 2586 (amended). Production of conservatee's will and other relevant estate plan documents**

2586. (a) As used in this section, "estate plan of the conservatee" includes, but is not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee



shall deliver such document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If such disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

*(d) For good cause, the court may order that a document constituting all or part of the estate plan of the conservatee, whether or not produced pursuant to an order under this section, shall be delivered for safekeeping to the custodian designated by the court. The court may impose such conditions as it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to do any acts a depositor could do under Part 15 (commencing with Section 700) of Division 2.*

**Comment.** Section 2586 is amended to add subdivision (d) to permit the court to order that the conservatee's estate planning documents be delivered to some other custodian for safekeeping. Under subdivision (d), "good cause" for ordering a transfer to some other custodian might include, for example, the case where the previous custodian has not used ordinary care for preservation of the document. See Section 710. See generally Sections 700-735 (deposit of estate planning documents with attorney).



## APPENDIX 8

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 519 OF THE STATUTES OF 1993 (ASSEMBLY BILL 209)

Chapter 519 of the Statutes of 1993 was introduced as Assembly Bill 209 by Assembly Member Paul V. Horcher on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 519 are set out in the Commission's recommendation *Deposit of Estate Planning Documents with Attorney*, 23 Cal. L. Revision Comm'n Reports 965 (1993). These comments remain applicable to Chapter 519, except for the revised comments set out below, which reflect amendments to the bill made during the legislative process.

**Gov't Code § 26827.6 (added). Fee for receiving and storing estate planning document**

**Comment.** Section 26827.6 is new.

**Gov't Code § 26827.7 (added). Fee for searching estate planning document**

**Comment.** Section 26827.7 is new.

**Prob. Code § 732 (added). Termination by transferring document to another attorney or superior court clerk**

**Comment.** Section 732 is new. The depositor's last known address may be shown in a notice and acknowledgment under Section 715, in the depositor's advice of change of address to the attorney, or otherwise.

Section 732 provides one way an attorney may terminate a deposit. An attorney may also terminate a deposit as provided in Section 731 or, if applicable, Section 734.

By permitting an attorney to transfer a document to another depository, Section 732 departs from the common law of bailments under which a depository ordinarily has no authority to transfer the property to someone else. See 8 Am. Jur. 2d *Bailments* § 97 (1980).

Under Section 732, if an attorney transfers estate planning documents to another attorney, all documents must go to the same attorney. Presumably, the transferring attorney will use this procedure at the time the transferring attorney retires or ceases to practice in the estate planning area. See also Bus. & Prof. Code §§ 6180, 6180.1 (notice of cessation of law practice required when attorney goes out of practice).

For the fee to transfer an estate planning document to the superior court clerk under subdivision (c), see Gov't Code § 26827.6. See also Sections 1215-1217 (mailing of notice).

**APPENDIX 9**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

**Parent and Child Relationship  
for Intestate Succession**

January 1993

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports 991 (1993).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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COLIN W. WIED

January 28, 1993

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation clarifies the statute on parent-child relationship for purposes of intestate succession. It makes clear that natural siblings of the adoptee do not have a broader right to inherit from the adoptee than the adoptee has to inherit from them, and that adoptive siblings in the adoptee's family of origin may inherit from the adoptee to the same extent as the adoptee's natural siblings. Other clarifying changes include treating a prior adoptive parent and child relationship as a natural parent and child relationship, and simplifying the "open and notorious" requirement to establish paternity after the death of the alleged father.

This recommendation was prepared pursuant to Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*





## PARENT AND CHILD RELATIONSHIP FOR INTESTATE SUCCESSION

In general, natural relatives of an adopted person may not inherit from or through the adoptee, except that the adoptee's issue, a wholeblood<sup>1</sup> brother or sister of the adoptee, or the issue of that brother or sister, may still inherit from the adoptee.<sup>2</sup> But if the adoption is by a stepparent, natural relatives may inherit from or through the adoptee (and the adoptee may inherit from natural relatives), provided that certain requirements are satisfied to show that the adoptee had been part of the natural family.<sup>3</sup> Must these familial ties also be established in order for the adoptee's wholeblood siblings or their issue to inherit from or through the adoptee in the case of a nonstepparent adoption? <sup>4</sup>

Although practitioners have had difficulty with this question, if the adoption was either by a stepparent or after the death of a natural parent, a wholeblood sibling of the adoptee may inherit from or through the adoptee only if the

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1. "Wholeblood" means that the siblings have both natural parents in common. *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923). The exception in Probate Code Section 6408(c), permitting wholeblood but not halfblood siblings of the adoptee to inherit if the requirements of subdivision (b) are satisfied, was based on the assumed likelihood that a halfblood sibling may be in the custody of another family and not have close family ties with the adoptee.

2. Prob. Code § 6408(c).

3. Prob. Code § 6408(b)(1). The natural parent and adopted person must have lived together at any time as parent and child, or the natural parent must have been married to or cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child. *Id.*

4. The question is whether the provision in subdivision (c) of Probate Code Section 6408 for inheritance by wholeblood brothers or sisters of the adoptee and their issue is independent of the requirements of subdivision (b), or whether subdivision (c) is subject to subdivision (b). If subdivision (c) is subject to subdivision (b), in order for wholeblood siblings of the adoptee to inherit not only must the adoption be by a nonstepparent and the requirements of familial ties be satisfied, but the adoption must be after the death of a natural parent. This is the only case in which both subdivisions (b) and (c) can apply.

requirements of familial ties are satisfied.<sup>5</sup> If this were not true and a wholeblood brother or sister could inherit from or through the adoptee without satisfying the requirements of familial ties, the adoptee's wholeblood siblings would inherit from the adoptee in cases where the adoptee would not inherit from them. This would be anomalous, and cannot be justified on policy grounds.

The Commission recommends the statute be revised to make clear that an adoptee's wholeblood siblings may inherit from or through the adoptee in the same cases the adoptee would inherit from them — where the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.<sup>6</sup>

Use of the term "wholeblood"<sup>7</sup> to describe siblings who may inherit from or through the adoptee notwithstanding the one-way inheritance provision may prevent children adopted by the adoptee's natural parents from inheriting from or through the adoptee. And there may be a question about the effect of successive adoptions. If there are successive adoptions, the first set of adoptive relatives should be cut off from inheriting from or through the adoptee the same as if they were natural relatives.

The Commission recommends adding a provision to the statute to say that, for the purpose of the effect of adoption on

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5. This is because inheritance is based on a "relationship of parent and child." See Prob. Code §§ 6408(a), 6402. The relationship of parent and child does not exist between the adoptee and the natural parent if the adoption is neither by a stepparent nor after the death of a natural parent. Prob. Code § 6408(b). Natural relatives of the adoptee, including a wholeblood brother or sister, may inherit from or through the adoptee only if a parent and child relationship exists with the natural parents, i.e., the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.

6. This revision would be a clarification of existing law, and would not be a substantive change.

7. See *supra* note 1.

inheritance, a prior adoptive parent-child relationship is treated as a natural parent-child relationship. This will also permit children adopted by both of the adoptee's parents in the adoptee's family of origin to inherit from or through the adoptee, the same as wholeblood natural siblings.

The present statute<sup>8</sup> is lengthy, with seven subdivisions. This makes it difficult to use and understand. The Commission recommends the present statute be repealed and its substance reenacted in a series of shorter sections. Technical and minor substantive changes would be included in the recodification.<sup>9</sup>

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8. Prob. Code § 6408.

9. The only significant change would simplify proof of paternity after death of the alleged father by requiring that he "openly" rather than "openly and notoriously" held out the child as his own. See Prob. Code § 6408(f)(2). Elimination of the "notoriously" requirement will simplify proof and better serve the purpose of the statute to ensure the child will inherit from or through an alleged father where the father was aware of the child's existence and believed the child to be his own. *Cf.* Estate of Sanders, 2 Cal. App. 4th 462, 475, 3 Cal. Rptr. 2d 536 (1992) (unfairness to child born out of wedlock where mother fails to bring paternity suit during father's lifetime).



## RECOMMENDED LEGISLATION

### Chapter heading immediately preceding Section 6400 (added)

#### CHAPTER 1. INTESTATE SUCCESSION GENERALLY

##### **Prob. Code § 6408 (repealed). Parent and child relationship**

~~6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:~~

~~(1) Except as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her natural parents, regardless of the marital status of the natural parents.~~

~~(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.~~

~~(b) The relationship of parent and child does not exist between an adopted person and the person's natural parent unless both of the following requirements are satisfied:~~

~~(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabitating with, the other natural parent at the time the child was conceived and died before the birth of the child.~~

~~(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.~~

~~(c) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.~~

~~(d) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:~~

~~(1) The parent or a relative of the parent acknowledged the child.~~

~~(2) The parent or a relative of the parent contributed to the support or the care of the child.~~

~~(e) For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and his or her foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.~~

~~(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:~~

~~(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.~~

~~(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.~~

~~(g) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.~~

**Comment.** Former Section 6408 is superseded by Sections 6450-6455.

**Prob. Code §§ 6450-6455 (added). Parent and child relationship**

**CHAPTER 2. PARENT AND CHILD RELATIONSHIP**

**§ 6450. Parent and child relationship**

6450. Subject to the provisions of this chapter, a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(a) The relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents.

(b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

**Comment.** Section 6450 continues former Section 6408(a) without substantive change. The language "[s]ubject to the provisions of this chapter" is placed in the introductory clause because Sections 6451, 6452, and 6454 modify the relationship of parent and child between an adopted person and the person's adopting parent or parents, as well as the relationship of parent and child between a person and the person's natural parents. See also Section 6453 (establishing natural parent-child relationship). In former Section 6408, application of the "except" clause was limited to the relationship of parent and child between a person and the person's natural parents.

The definitions of "child" (Section 26), "issue" (Section 50), and "parent" (Section 54) adopt the rules set out in this chapter. See also Section 6152 (construction of wills).

**§ 6451. Effect of adoption**

6451. (a) An adoption severs the relationship of parent and child between an adopted person and a natural parent of the

adopted person unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) Neither a natural parent nor a relative of a natural parent (except for a wholeblood brother or sister of the adopted person or the issue of that brother or sister) inherits from or through the adopted person on the basis of a parent and child relationship between the adopted person and the natural parent that satisfies the requirements of paragraphs (1) and (2) of subdivision (a), unless the adoption is by the spouse or surviving spouse of that parent.

(c) For the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship.

**Comment.** Section 6451 continues the substance of former Section 6408(b)-(c).

In case of an adoption coming within subdivision (a), the adopted child may inherit from or through the adoptive parent, and also from or through the natural parent who gave up the child for adoption or through the natural parent who died preceding the adoption. The following examples indicate in various situations whether an adopted child or the issue of an adopted child may inherit from or through the child's natural parent.

*Example 1.* Child never lived with either mother or father. Both parents relinquish child for adoption. The adopted child's relationship with both natural parents' families is severed. The requirements of subdivision (a)(1) are not satisfied.

*Example 2.* Child's mother and father were married or lived together as a family. Child lives with mother and father. Father dies. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of subdivision (a) is



satisfied because the adoption was “after the death of either of the natural parents.”

*Example 3.* Child’s mother and father were married or lived together as a family until father died. Child lives with mother but not father because father died prior to child’s birth. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father’s family and of the relinquishing mother’s family. Child remains a member of the deceased father’s family because the father died before the birth of the child (satisfying the subdivision (a)(1) requirement) and the adoption was after the death of the father (satisfying the subdivision (a)(2) requirement).

Under subdivision (a), a non-stepparent adoption severs the relationship between the adopted person and his or her natural “parent.” Thus, for example, if a person is adopted by only one adopting parent, that severs the parent-child relationship between the adopted person and his or her natural parent of the same gender as the adopting parent. The parent-child relationship continues to exist between the adopted person and his or her other natural parent.

In case of an adoption described in subdivision (b), the natural relatives cannot inherit from the adopted child, even though under Section 6450(a) the child could inherit from the natural relatives.

In subdivision (b), the reference to inheritance on the basis of a parent-child relationship “that satisfies the requirements of paragraphs (1) and (2) of subdivision (a)” is added to make clear that, for a wholeblood brother or sister to inherit from or through the adoptee, the requirements of these two paragraphs must be satisfied. Under these two paragraphs, the relationship of parent and child does not exist between an adopted person and the person’s natural parent unless the living-together or other requirements of paragraph (1) of subdivision (a) are satisfied, and the adoption was after the death of either natural parent. If the adoption was by the spouse of either natural parent, by its terms subdivision (b) does not apply. This is a nonsubstantive, clarifying revision, since that was the intent of subdivisions (b) and (c) of former Section 6408.

Subdivision (b) omits the reference to the adoptee’s “issue” that was in the parenthetical “except” clause in subdivision (c) of former Section 6408. The former reference to “issue” was unnecessary. Issue of the adoptee do not inherit from or through the adoptee on the basis of a parent-child relationship between the adoptee and the adoptee’s parents. Rather they inherit from or through the adoptee on the basis of the parent-child relationship between themselves and the adoptee.

Subdivision (c) is new, and makes clear that, for the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship. Thus, for example, if a person is

adopted by one set of parents, and later is adopted by a second set of parents, the second adoption severs the parent-child relationship between the adoptee and the first set of adoptive parents unless paragraphs (1) and (2) of subdivision (a) are satisfied, substituting “adoptive” for “natural” in those paragraphs. This is a clarification, and may be a change in prior law.

“Wholeblood” relatives were defined in *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923), to mean persons having both natural parents in common. One effect of subdivision (c) is to broaden “wholeblood” in subdivision (b) to include adoptive siblings in an appropriate case. For example, assume a person, *P*, is born to two parents, a brother, *B*, is born to the same two parents, and a half-sister, *S*, is born to the mother and later adopted by the father. *B* is a wholeblood sibling of *P* because they have both natural parents in common. For the purpose of inheritance, *S* is treated as a wholeblood sibling of *P*, because under subdivision (c) the effect of the adoption is to treat *S* as the natural child of the adopting father. If *P* is later adopted by two adopting parents, under subdivision (b) the adoption cuts off inheritance by most of *P*’s natural relatives, except that both *B* and *S* may inherit from or through *P* if the requirements of paragraphs (1) and (2) of subdivision (a) are satisfied.

#### **§ 6452. Effect of birth out of wedlock**

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent (except for a brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

**Comment.** Section 6452 continues the substance of former Section 6408(d).

The parenthetical “except” clause in Section 6452 omits the reference to the adoptee’s “issue” that was in former Section 6408(d). The former reference to “issue” was unnecessary. Issue of a child born out of wedlock do not inherit from or through that child (their parent) on the basis of a parent-child relationship between the out-of-wedlock child and

the child's parents. Rather they inherit from or through the out-of-wedlock child on the basis of the parent-child relationship between themselves and that child.

Also omitted in the parenthetical "except" clause is the former reference to a "natural" brother or sister of the out-of-wedlock child. This recognizes that an adoptive brother or sister of the out-of-wedlock child may inherit from or through that child. See Section 6450(b).

Section 6452 requires both acknowledgment and contribution to the support or care of a child born out of wedlock before a parent or a relative of a parent may inherit from or through the child, except that the issue of the child or a brother or sister of the child or the issue of such brother or sister may inherit from or through the child even though these requirements are not satisfied. For the purpose of Section 6452, it is sufficient if a relative of the parent acknowledges the child and contributes to the support or care of the child. If the child born out of wedlock is adopted, inheritance from or through the child may be precluded under Section 6451, even where the requirements of Section 6452 are satisfied.

### **§ 6453. Establishing natural parentage**

6453. For the purpose of determining whether a person is a "natural parent" as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless either (1) a court order was entered during the father's lifetime declaring paternity or (2) paternity is established by clear and convincing evidence that the father has openly held out the child as his own.

**Comment.** Section 6453 continues the substance of former Section 6408(f), except that former Section 6408(f)(2) required the father to have "openly and notoriously held out the child as his own." Subdivision (b) omits "and notoriously," and merely requires the father to have "openly held out" the child as his own.

**§ 6454. Inheritance involving foster child or stepchild**

6454. For the purpose of determining intestate succession by a person or the person's issue from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements are satisfied:

(a) The relationship began during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent.

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

**Comment.** Section 6454 continues the substance of former Section 6408(e). Section 6454 applies, for example, where a foster child or stepchild is not adopted because a parent of the child refuses to consent to the adoption. See also *Estate of Lind*, 209 Cal. App. 3d 1424, 257 Cal. Rptr. 853 (1989); *Estate of Claffey*, 209 Cal. App. 3d 254, 257 Cal. Rptr. 197 (1989).

In the introductory clause of Section 6454, "issue" is substituted for "descendants" in former Section 6408(e). This change is nonsubstantive, and is for consistency with other provisions in this part. See, e.g., Sections 6401, 6402, 6402.5, 6451, 6452, 6455.

Even though the requirements of Section 6454 are satisfied, the natural parent may continue to inherit from the child under Section 6450(a). The foster parent or stepparent may not inherit from the child: Subdivision (b) of Section 6450 does not apply because the adoption was not completed, and Section 6454 does not apply because the section applies only to inheritance by the foster child or stepchild or the child's issue "from" or "through" a foster parent or stepparent, not to inheritance "by" a foster parent or stepparent. The child, however, may inherit both from the natural parent under Section 6450(a), and from the foster parent or stepparent under Section 6454.

**§ 6455. Equitable adoption**

6455. Nothing in this chapter affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or the child's issue.

**Comment.** Section 6455 continues the substance of subdivision (g) of former Section 6408. "Issue" is substituted in Section 6455 for

“descendants” in former Section 6408(g). This change is nonsubstantive, and is for consistency with other provisions in this part. See, e.g., Sections 6401, 6402, 6402.5, 6451, 6452, 6454.

Concerning equitable adoption, see *Estate of Wilson*, 111 Cal. App. 3d 242, 168 Cal. Rptr. 533 (1980).

## CONFORMING REVISIONS

### **Prob. Code § 1207 (technical amendment). Exceptions to notice requirement involving parent-child relationship**

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent’s beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 6454 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

**Comment.** Section 1207 is amended to revise a cross-reference.

### **Prob. Code § 6406 (technical amendment). Relatives of halfblood**

6406. *Relatives Except as provided in Section 6451, relatives* of the halfblood inherit the same share they would inherit if they were of the whole blood.

**Comment.** Section 6406 is amended to recognize the exception in Section 6451. This amendment is clarifying.



## APPENDIX 10

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 529 OF THE STATUTES OF 1993 (ASSEMBLY BILL 1137)

Chapter 529 of the Statutes of 1993 was introduced as Assembly Bill 1137 by Assembly Member W. J. "Pete" Knight on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 529 are set out in the Commission's recommendation *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports 991 (1993). These comments remain applicable to Chapter 529, except for the revised comments set out below, which reflect amendments to the bill made during the legislative process.

#### **Prob. Code § 6451 (added). Effect of adoption**

**Comment.** Section 6451 continues the substance of subdivisions (b) and (c) of former Section 6408.

In case of an adoption coming within subdivision (a), the adopted child may inherit from or through the adoptive parent, and also from or through the natural parent who gave up the child for adoption or through the natural parent who died preceding the adoption. The following examples indicate in various situations whether an adopted child or the issue of an adopted child may inherit from or through the child's natural parent.

*Example 1.* Child never lived with either mother or father. Both parents relinquish child for adoption. The adopted child's relationship with both natural parents' families is severed. The requirements of subdivision (a)(1) are not satisfied.

*Example 2.* Child's mother and father were married or lived together as a family. Child lives with mother and father. Father dies. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of subdivision (a) is satisfied because the adoption was "after the death of either of the natural parents."

*Example 3.* Child's mother and father were married or lived together as a family until father died. Child lives with mother but not father because father died prior to child's birth. Mother relinquishes child for adoption. For the purpose of inheritance, the adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. Child remains a member of the deceased father's family because the father died before the birth of the child (satisfying the subdivision (a)(1) requirement) and the adoption was after the death of the father (satisfying the subdivision (a)(2) requirement).

Under subdivision (a), a non-stepparent adoption severs the relationship between the adopted person and his or her natural "parent." Thus, for example, if a person is adopted by only one adopting parent, that severs the parent-child relationship between the adopted person and his or her natural parent of the same gender as the adopting parent. The parent-child relationship continues to exist between the adopted person and his or her other natural parent.

In case of an adoption described in subdivision (b), the natural relatives cannot inherit from the adopted child, even though under Section 6450(a) the child could inherit from the natural relatives.

In subdivision (b), the reference to inheritance on the basis of a parent-child relationship "that satisfies the requirements of paragraphs (1) and (2) of subdivision (a)" is added to make clear that, for a wholeblood brother or sister to inherit from or through the adoptee, the requirements of these two paragraphs must be satisfied. Under these two paragraphs, the relationship of parent and child does not exist between an adopted person and the person's natural parent unless the living-together or other requirements of paragraph (1) of subdivision (a) are satisfied, and the adoption was after the death of either natural parent. This changes the rule of *In re Estate of Reedy*, 22 Cal. Rptr. 2d 478 (1993), *petition for hearing in California Supreme Court filed*. If the adoption was by the spouse of either natural parent, by its terms subdivision (b) does not apply.

Subdivision (b) omits the reference to the adoptee's "issue" that was in the parenthetical "except" clause in subdivision (c) of former Section 6408. The former reference to "issue" was unnecessary. Issue of the adoptee do not inherit from or through the adoptee on the basis of a parent-child relationship between the adoptee and the adoptee's parents. Rather they inherit from or through the adoptee on the basis of the parent-child relationship between themselves and the adoptee.

Subdivision (c) is new, and makes clear that, for the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship. Thus, for example, if a person is adopted by one set of parents, and later is adopted by a second set of par-



ents, the second adoption severs the parent-child relationship between the adoptee and the first set of adoptive parents unless paragraphs (1) and (2) of subdivision (a) are satisfied, substituting “adoptive” for “natural” in those paragraphs. This is a clarification, and may be a change in prior law.

“Wholeblood” relatives were defined in *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923), to mean persons having both natural parents in common. One effect of subdivision (c) is to broaden “wholeblood” in subdivision (b) to include adoptive siblings in an appropriate case. For example, assume a person, *P*, is born to two parents, a brother, *B*, is born to the same two parents, and a half-sister, *S*, is born to the mother and later adopted by the father. *B* is a wholeblood sibling of *P* because they have both natural parents in common. For the purpose of inheritance, *S* is treated as a wholeblood sibling of *P*, because under subdivision (c) the effect of the adoption is to treat *S* as the natural child of the adopting father. If *P* is later adopted by two adopting parents, under subdivision (b) the adoption cuts off inheritance by most of *P*’s natural relatives, except that both *B* and *S* may inherit from or through *P* if the requirements of paragraphs (1) and (2) of subdivision (a) are satisfied.

**Prob. Code § 6453 (added). Establishing natural parentage**

**Comment.** Subdivision (a) and paragraphs (1) and (2) of subdivision (b) of Section 6453 continue the substance of former Section 6408(f), except that former Section 6408(f)(2) required the father to have “openly and notoriously held out the child as his own.” Paragraph (2) of subdivision (b) of Section 6453 omits “and notoriously,” and merely requires the father to have “openly held out” the child as his own.



**APPENDIX 11**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

**Effect of Joint Tenancy Title  
on Marital Property**

November 1993

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Effect of Joint Tenancy Title on Marital Property*, 23 Cal. L. Revision Comm'n Reports 1013 (1993).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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November 18, 1993

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

Historically in California married persons have taken title to their community and separate property in joint tenancy form unaware of the adverse consequences of that form of tenure, including the inability to will it or to obtain community property tax benefits. On the death of a spouse the survivor frequently has needed to make a showing that the joint tenancy title was for convenience only and there was no intent to convert the community property or separate property of a spouse to joint interests in separate property. In recent years this informal arrangement has broken down as courts have given greater effect to the form of title and the Internal Revenue Service has refused to recognize community property claims for property titled as joint tenancy unless evidenced by a written agreement.

This recommendation is intended to ensure that married persons who take title to property as joint tenants do so knowingly and intentionally. In order to convert community property or separate property of a spouse to joint tenancy, the spouses must transmute the property by an express written declaration; otherwise it retains its original character. The recommendation includes a statutory form that informs married persons of the advantages and disadvantages of community property, separate property, and joint tenancy. The statutory form also includes a proper declaration to enable the married persons to transmute community property or separate property of a spouse to joint tenancy, if desired. The statutory pre-

sumption that community property and separate property of a spouse retain their original character unless transmuted to joint tenancy would apply prospectively to property titled in joint tenancy after the operative date of the statute. Third parties who rely on apparent joint tenancy title are protected.

The Commission wishes to acknowledge the assistance of its consultant on this study, Professor Jerry A. Kasner of Santa Clara University Law School. The background study prepared by Professor Kasner is *Community Property in Joint Tenancy Form: Since We Have It, Lets Recognize It* (1991).

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapters 31 and 96 of the Statutes of 1993.

Respectfully submitted,

Sanford M. Skaggs  
*Chairperson*

## EFFECT OF JOINT TENANCY TITLE ON MARITAL PROPERTY

A husband and wife in California may hold property together in joint tenancy or as community property.<sup>1</sup> The two types of tenure, one common law and the other civil law, have different legal incidents — the spouses have different management and control rights and duties, creditors have different rights to reach the property, and the property is treated differently at dissolution of marriage and at death.<sup>2</sup>

In California it is common for husband and wife to take title to property in joint tenancy form even though the property is acquired with community funds or with separate property of a spouse. Frequently the joint tenancy title form is selected by the spouses on the advice of a broker or other person who is unaware of the differences in legal treatment between the types of property tenure. The spouses themselves ordinarily do not know the differences between the types of tenure, other than that joint tenancy involves a right of survivorship.<sup>3</sup>

A person who is adversely affected by the joint tenancy title form may subsequently attempt to prove that the spouses did not intend to transmute the community property into joint tenancy. Because joint tenancy is often disadvantageous to the spouses,<sup>4</sup> the courts in the past have been liberal in relax-

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1. Fam. Code § 750. The spouses may also hold property as tenants in common, although this is relatively infrequent.

2. See, e.g., Sterling, *Joint Tenancy and Community Property in California*, 14 Pac. L.J. 927 (1983), reprinted in 10 Community Prop. J. 157 (1983).

3. See, e.g., Bruch, *The Definition and Division of Marital Property in California: Towards Parity and Simplicity*, 33 Hastings L.J. 769, 830 & n.239, 832 n.242, 833 & n.245 (1982); Sterling, *supra* note 2, 14 Pac. L.J. at 928-29, reprinted in 10 Community Prop. J. at 158-59.

4. Joint tenancy may frustrate the decedent's will or trust or other estate plan and result in adverse tax consequences if the property has appreciated in value. See discussion below.

ing evidentiary rules to allow proof either that the spouses did not intend to transmute community property or separate property of a spouse to joint interests in separate property or, if they did, that they subsequently transmuted it back.<sup>5</sup>

The result has been general confusion and uncertainty in this area of the law, accompanied by frequent litigation<sup>6</sup> and negative critical comment.<sup>7</sup> It is apparent that the interrelation of community property, separate property, and joint tenancy requires clarification.

Legislation enacted in 1965 directly addressed the problem of married persons taking title to property in joint tenancy form without being aware of the consequences and in fact believing the property is community.<sup>8</sup> Former Civil Code Section 5110 was enacted to provide that a single-family residence acquired during marriage in joint tenancy form is presumed community property for purposes of dissolution of

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5. See also discussion in Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143, 159-68 (1981).

6. See, e.g., *Siberell v. Siberell*, 214 Cal. 767, 7 P.2d 1003 (1932); *Delanoy v. Delanoy*, 216 Cal. 23, 13 P.2d 513 (1932); *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P.2d 905 (1944). Cases struggling with the issue in the past few years include *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980); *Estate of Levine*, 125 Cal. App. 3d 701, 178 Cal. Rptr. 275 (1981); *In re Marriage of Stitt*, 147 Cal. App. 3d 579, 195 Cal. Rptr. 172 (1983); *In re Marriage of Leversee*, 156 Cal. App. 3d 891, 203 Cal. Rptr. 481 (1984); *Estate of Blair*, 199 Cal. App. 3d 161, 244 Cal. Rptr. 627 (1988); *In re Marriage of Allen*, 8 Cal. App. 4th 1225, 10 Cal. Rptr. 2d 916 (1992), *review granted*, 13 Cal. Rptr. 2d 474 (1992), *review dismissed as improvidently granted, cause remanded to Ct. App. for entry of judgment conforming to prior opinion*, 16 Cal. Rptr. 2d 181 (1993); *In re Marriage of Hilke*, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992).

7. See, e.g., Marshall, *Joint Tenancy Taxwise and Otherwise*, 40 Calif. L. Rev. 501 (1952); Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87 (1961); Mills, *Community Joint Tenancy—A Paradoxical Problem in Estate Administration*, 49 Cal. St. B.J. 38 (1974); Reppy, *supra* note 5; Bruch, *supra* note 3; Sterling, *supra* note 2; Kasner, *Community Property in Joint Tenancy Form: Since We Have It, Lets Recognize It* (1991) (on file with California Law Revision Commission); Petrulius, *Joint Tenancy: A Mere Form of Title*, 12 Est. Plan. Tr. & Prob. News, Winter 1992, No. 4, at 8 (Cal. St. Bar).

8. Cal. Assem. Int. Comm. on Judic., Final Report relating to Domestic Relations, *reprinted in* 2 App. J. Assem., Cal. Leg. Reg. Sess. 122-25 (1965).



marriage. This presumption had a beneficial effect and was expanded in 1983 to apply to all property acquired during marriage in joint tenancy form.<sup>9</sup> The 1983 legislation also made clear that the community property presumption may be rebutted only by a clear writing by the spouses, but that separate property contributions are reimbursable at dissolution of marriage.<sup>10</sup> This legislation is limited in effect and does not address treatment of the property at death of a spouse,<sup>11</sup> or during marriage before dissolution or death.

Community property provides a married person important protections that a joint tenancy of separate property interests does not. Community property protections include:

(1) Fiduciary duties in management and control of the property.<sup>12</sup>

(2) Limitations on depletion of the community by gift.<sup>13</sup>

(3) Limitations on disposition of the family home or other community real property.<sup>14</sup>

(4) Prohibition on forced partition of the property during marriage.<sup>15</sup>

(5) Right to will the decedent's community property interest.<sup>16</sup>

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9. Civ. Code § 4800.1, enacted by 1983 Cal. Stat. ch. 342, § 1, *repealed* by Assembly Bill 2650, 1992 Cal. Stat. ch. 162, § 3, operative Jan. 1, 1994 (retaining much of former § 4800.1 as Fam. Code § 2580). See California Law Revision Commission — Report Concerning Assembly Bill 26, 1983 Sen. J. 4865 (1983).

10. Civ. Code § 4800.2, enacted by 1983 Cal. Stat. ch. 342, § 2, *repealed* by Assembly Bill 2650, 1992 Cal. Stat. ch. 162, § 3, operative Jan. 1, 1994 (retaining much of former § 4800.2 as Fam. Code § 2640).

11. *In re Marriage of Hilke*, 4 Cal. 4th 215, 220-21, 841 P.2d 891, 14 Cal. Rptr. 2d 371, 375 (1992).

12. Fam. Code §§ 721, 1100(e), 1101.

13. Fam. Code § 1100(b).

14. Fam. Code § 1102.

15. Code Civ. Proc. § 872.210(b).

16. Prob. Code § 6101.

(6) Stepped-up income tax basis for appreciated community property share of the surviving spouse.<sup>17</sup>

Joint tenancy provides greater protection than community property from liability for debts of a married person, both during the marriage and after the death of a spouse.<sup>18</sup> During the marriage the debts of a spouse may only be satisfied out of the spouse's one-half interest in joint tenancy, and after the spouse dies the survivor may take the one-half interest free of the spouse's debts. However, the common law protection against debts is at the expense of a creditor who may be denied payment for a just debt. Moreover, the limitation on liability of joint tenancy property may cause a joint tenant to be allowed credit only with the signature of the other joint tenant and only subject to a security interest in the joint tenancy property. By comparison, the statute governing liability of community property for debts represents deliberate social policy based on a balanced consideration of all aspects of the debtor-creditor relationship, including the need for fairness to all parties and to encourage extension of credit to married persons.<sup>19</sup>

Other arguments that have been advanced for the desirability of joint tenancy for married persons also are problematic:

- Depreciated joint tenancy property retains a higher income tax basis than depreciated community property. However, to date the vast majority of decedents' property in California has appreciated rather than depreciated in value, and community property receives a substantial tax advantage in this situation.
- Joint tenancy property may appear to pass automatically to the surviving spouse at death. But either spouse may unilaterally

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17. Int. Rev. Code § 1014.

18. See discussion in Sterling, *supra* note 2, 14 Pac. L.J. at 945-51, reprinted in 10 Community Prop. J. at 175-82.

19. *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1983).

ally sever the joint tenancy and devise the spouse's interest in the property. This is comparable to community property, which passes to the surviving spouse unless devised by the decedent.<sup>20</sup>

- Automatic passage to the surviving spouse under joint tenancy may, and frequently does, frustrate a well-conceived estate plan that seeks to pass the decedent's share of the property, for example, to a bypass trust or a child of a former marriage. Under community property tenure this unfortunate situation cannot occur.

- The ability to clear title quickly by affidavit of death is an important characteristic of joint tenancy property that is also a feature of community property. Community property passes to the surviving spouse without probate,<sup>21</sup> although the surviving spouse may elect probate if desired.<sup>22</sup> Clear title to community property may be established by affidavit of death.<sup>23</sup>

The statutory incidents of community property that have been enacted over the years for the protection of married persons correspond with what most married persons want and expect. They are generally advantageous to married persons. Joint tenancy ill-serves the needs of most married persons, despite its wide-spread but uninformed use.

Joint tenancy also has a serious impact on a married person's separate property. Transmutation of separate property of a spouse to joint tenancy title causes an immediate and irrevocable gift to the other spouse of half the person's separate property, which cannot be recovered at termination of marriage by dissolution or death.

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20. Prob. Code § 6401.

21. Prob. Code § 13500.

22. Prob. Code § 13502.

23. Prob. Code § 13540.

For these reasons, the Law Revision Commission recommends that the law should ensure that married persons who take title as joint tenants do so knowingly and intentionally.

In order to convert community property or separate property of a spouse to joint interests in separate property, the spouses should make an express and knowing transmutation of the property.<sup>24</sup> A statutory form should be enacted with sufficient information and a proper declaration to enable a person to transmute community property to joint tenancy, if that is what is really desired. A person who assists married persons in titling their property should be protected from liability for any harm that may result if the person provides them a copy of the statutory form. Failure to execute a proper declaration of a knowing and intentional transmutation of community prop-

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24. This is analogous to the "Acceptance of Joint Tenancy" in use in Arizona. The requirement would apply to both community property and separate property.

The transmutation statute is found in Family Code Sections 850-853:

850. Subject to Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following:

(a) Transmute community property to separate property of either spouse.

(b) Transmute separate property of either spouse to community property.

(c) Transmute separate property of one spouse to separate property of the other spouse.

851. A transmutation is subject to the laws governing fraudulent transfers.

852. (a) A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

(b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.

(c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage.

(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.

(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to that transmutation shall continue to apply.

853. A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in a proceeding commenced before the death of the person who made the will.

erty or separate property of a spouse to joint interests in separate property should leave the character of the property unaffected.<sup>25</sup> Third parties who act in reliance on the apparent joint tenancy title should be protected in that reliance, provided they have no contrary notice of the community or separate character of the property.

The community property and separate property presumptions correspond with the probable intent of most married persons<sup>26</sup> as well as with the probable effect of existing statute and case law.<sup>27</sup> However, the presumptions should be applied prospectively only, due to the possibility that some existing joint tenants may have relied on the law in effect at the time the property was subjected to the joint tenancy title.<sup>28</sup>

The proposed statutory scheme corresponds with the intention of most married persons not to lose basic community property protections and separate property rights merely by taking property in joint tenancy title form, while enabling those who really want joint tenancy treatment to obtain it. The

25. The law applicable to commingling, tracing, reimbursement, gift, and other principles affecting separate property contributions to community property or joint tenancy would be unaffected unless a valid transmutation is made. *See, e.g.*, Fam. Code § 2640 (separate property contributions to property acquisition).

26. The Law Revision Commission has consulted with a number of estate planning experts active in state and local bar associations. Their experience is that most married persons, when fully informed of the differences in treatment between community property and separate property held as joint tenants, indicate a preference and intent that the property remain community.

27. The requirement in Family Code Section 852 (formerly Civil Code Section 5110.730) of an express declaration in writing to transmute community property to separate property may negate the effect of many joint tenancy titles and leave unaffected the character of property having a community property source. *See* discussion in Kasner, *supra* note 7; Petrulis, *supra* note 7, at 8.

28. This is not a constitutional issue. Retroactivity of a statutory community property presumption for property in joint tenancy form would be validated by *In re Marriage of Hilke*, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992) (a joint tenancy survivorship right is not a vested right before the death of a joint tenant). In any event it is likely that the effect of existing statute and case law, at least as of January 1, 1985 (the effective date of the transmutation statute), is the same as that proposed in this recommendation — community property and separate property remain community and separate unless transmuted to joint interests in separate property. *See supra* note 27.

proposed law will provide certainty and minimize litigation over the issue whether the property should be treated as community property, separate property of a spouse, or joint interests in separate property.

Treating the property as community at death enables passage at death to the surviving spouse without probate. Title to the property can be cleared quickly and simply either by affidavit<sup>29</sup> or by summary court proceeding.<sup>30</sup> It also avoids possible frustration of the decedent's estate plan since the community property may be passed by will (for example, to an exemption-equivalent testamentary bypass trust, with resultant tax savings for survivors).

In short, community property tenure is more advantageous to the parties than joint tenancy in the ordinary case, and corresponds to the ordinary expectations of the parties who take title in joint tenancy form. The law should be clear that community property in joint tenancy form receives community property treatment for all purposes, unless the parties clearly indicate in writing their intent to hold their interests as joint tenants in separate property.

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29. Prob. Code §§ 210-212; see also Prob. Code § 13540 (right of surviving spouse to dispose of real property).

30. Prob. Code §§ 13650-13660.

## RECOMMENDED LEGISLATION

**Civ. Code § 683 (amended). Creation of joint interest**

SECTION 1. Section 683 of the Civil Code is amended to read:

683. (a) ~~A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement. A joint tenancy in real or personal property may be created by a will, deed, or other written instrument of transfer, ownership, or agreement if the document expressly declares that the property is to be held in joint tenancy.~~

(b) Provisions of this section do not apply to a joint account in a financial institution if Part 2 (commencing with Section 5100) of Division 5 of the Probate Code applies to such the account.

(c) *This section is subject to Chapter 6 (commencing with Section 860) of Part 2 of Division 4 of the Family Code (effect of joint tenancy title on marital property).*

**Comment.** Subdivision (c) is added to Section 683 to recognize enactment of Family Code Sections 860-868, governing the effect of joint tenancy title on real and personal marital property.

Subdivision (a) is revised for purposes of simplification and clarity. The revision is not intended to change the common law incidents of joint

tenancy formerly referred to in subdivision (a). Specifically, the revision does not change the common law that a joint interest is one owned by two or more persons in equal shares. See also Section 682 (ownership by several persons may be of joint interests). Nor does the revision change the common law that joint tenancy is created by a single instrument, or that joint tenancy may be created by a transfer among various permutations of owners and others.

The revision of subdivision (a) preserves a provision in derogation of the common law—creation of a joint tenancy must be by an express declaration. See also Section 686 (declaration required for creation of joint interest).

The reference to a grant or devise to executors or trustees as joint tenants formerly found in subdivision (a) is not continued. Rights and duties among joint executors and cotrustees are governed by statute and not by the law of joint tenancy. See Prob. Code §§ 9630-9631 (joint personal representatives), 15620-15622 (cotrustees).

**Fam. Code §§ 860-868 (added). Effect of joint tenancy title on marital property**

SEC. 2. Chapter 6 (commencing with Section 860) is added to Part 2 of Division 4 of the Family Code, to read:

**CHAPTER 6. EFFECT OF JOINT TENANCY  
TITLE ON MARITAL PROPERTY**

**§ 860. Scope of chapter**

860. This chapter applies to real and personal property held between married persons in joint tenancy form, regardless of whether the property is acquired in whole or part with community property or separate property or whether the form of title is the result of an agreement, transfer, exchange, express declaration, or other instrument or transaction that affects the property.

**Comment.** Sections 860 to 868 govern the effect of joint tenancy title on marital property. A husband and wife may hold property as joint tenants (or tenants in common) or as community property. Section 750. Joint tenancy (or tenancy in common) is a form of separate property ownership and is inconsistent with community property. See, e.g., *Siberell v. Siberell*, 214 Cal. 767, 7 P.2d 1003 (1932). See, generally,



discussion in Sterling, *Joint Tenancy and Community Property in California*, 14 Pac. L.J. 927 (1983), *reprinted in* 10 Comm. Prop. J. 157 (1983). See also Section 864 (effect of transmutation to joint tenancy) & Comment.

Section 860 applies this chapter to all marital property held in joint tenancy form, whether the property has a community property source, a separate property source, or a mixed community property and separate property source. Thus to the extent joint tenancy tenure is imposed on the property under this chapter, this chapter governs treatment of separate property contributions and overrides prior law applicable to commingling, tracing, reimbursement, gift, and other principles affecting separate property and community property rights. The presumptions provided in this chapter do not apply, however, at dissolution of marriage. *Cf.* Section 2581 (community property presumption for property held in joint form).

This chapter applies to personal property as well as real property. See also Section 760 (community property).

#### **§ 861. Marital property presumptions notwithstanding joint tenancy title**

861. (a) If married persons hold property in joint tenancy form:

(1) To the extent the property has a community property source it is presumed to be community property.

(2) To the extent the property has a separate property source it is presumed to be separate property, subject to commingling, tracing, reimbursement, gift, and other principles affecting separate property.

(b) The presumptions established by subdivision (a) are presumptions affecting the burden of proof and are rebuttable only pursuant to Section 862.

(c) The presumptions established by subdivision (a) do not affect the manner of division of property upon dissolution of marriage or legal separation of the parties pursuant to Division 7 (commencing with Section 2500).

**Comment.** Section 861 resolves the conflict in the case law among the presumptions that (1) property acquired by the spouses during marriage is community property, (2) property held by the spouses during marriage retains the community or separate characterization of its source, and (3)

joint tenancy title means what it says. Under Section 861, when these presumptions conflict, the community property and source presumptions prevail over the title presumption. These presumptions may be overridden only by proof of a transmutation to joint tenancy. See Section 862. The joint interests of married persons are their separate property. Section 864. It should be noted, however, that third parties may act in reliance on apparent joint tenancy title. Section 866.

Under this section, community property that is not properly transmuted to joint tenancy remains community property for all purposes and receives community property treatment at death, including tax and creditor treatment and, if left to the surviving spouse by will or by intestacy, passage without probate (unless probate is elected by the surviving spouse). Section 865 (passage of marital property by affidavit of death without probate); see also Prob. Code § 13500. In the case of community real property that passes without probate, the surviving spouse has full power to deal with and dispose of the property after 40 days from the death of the spouse, and title to the property may be established by affidavit. Prob. Code § 13540.

Likewise, separate property of a spouse that is not properly transmuted to joint tenancy remains the separate property of the spouse and is subject to commingling, tracing, reimbursement, gift, and other principles affecting separate property.

It should be noted that the community and separate property presumptions of this section do not override the principles governing division of marital property at dissolution of marriage. See Sections 2581 & 2640 (community property presumption subject to reimbursement of separate property contributions). However, if marital property has been transmuted to joint tenancy, the property is owned equally by the spouses, which affects its division at dissolution of marriage. See Section 864 & Comment (effect of transmutation to joint tenancy).

### **§ 862. Transmutation of community or separate property to joint tenancy**

862. The presumptions established by Section 861 may be rebutted only by proof of (1) an instrument in the form provided in Section 863 or (2) an instrument that otherwise satisfies Chapter 5 (commencing with Section 850) (transmutation of property) and includes an express declaration that the property or tenure is converted to joint tenancy or separate property held jointly, or words to that effect expressly stating that the characterization or ownership

of the property is being changed. The instrument may be a part of a document of title or may be a separate instrument, and may be executed together with a document of title or at another time.

**Comment.** Section 862 makes clear that the transmutation statute governs creation of joint tenancy from community property or separate property. The spouses may transmute marital property to joint tenancy by agreement or transfer. Section 850. The joint interests of married persons are their separate property. Section 864. A transmutation of real or personal property is not valid unless done in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose existing interest in the property is affected. Section 852(a). A transmutation of real property is not effective as to third parties without notice of it unless recorded. Section 852(b); see also Section 866 (reliance on joint tenancy form of title).

Under this section an express declaration transmuting marital property to joint tenancy should state that the property or tenure is converted to joint tenancy or separate property held jointly, or words to that effect expressly stating that the character or ownership of the property is being changed. This requirement seeks to codify case law as applied to a transmutation to joint tenancy. *Cf.* Estate of MacDonald, 51 Cal. 3d 262, 271-72, 794 P.2d 911, 272 Cal. Rptr. 153 (1990). The express declaration requirement may be satisfied by use of the statutory form provided in Section 863.

### **§ 863. Statutory form**

863. (a) An instrument transmuting community property or separate property of a married person to joint tenancy satisfies Section 862 if the instrument is made in writing by an express declaration substantially in the following form and signed by each spouse:

#### **DECLARATION OF JOINT TENANCY**

**This Information Is a Summary and Not a Complete Statement of the Law. You May Wish To Seek Expert Advice Before Signing this Declaration.**

**DO YOU WANT TO GIVE UP YOUR COMMUNITY PROPERTY AND SEPARATE PROPERTY RIGHTS IN THE PROPERTY DESCRIBED BELOW?** If you sign this declaration

the property will be joint tenancy and will not be community property. You will give up half of any separate property interest you have in the property. Some of the rights you will lose are summarized below.

### **If You Now Have Community Property ...**

You and your spouse own community property equally and the entire property is subject to your debts. You may pass your share of community property by will or put it in a trust, but otherwise it goes automatically to your spouse when you die and does not have to be probated. The surviving spouse gets an income tax benefit if the property has increased in value.

If you sign this declaration:

- Your community property is converted to joint tenancy, owned equally with your spouse.
- Your share may not be subject to your spouse's debts. However, this may limit your ability to get credit without your spouse's signature.
- You cannot pass your share by will or put it in a trust as long as the joint tenancy remains in effect. When you die your share goes automatically to your spouse without probate. Your spouse will get an income tax benefit only if the property has decreased in value.

Do not sign this declaration if you want community property. Instead, you should take title as community property.

### **If You Now Have Separate Property ...**

You own your separate property absolutely and have full power to manage and dispose of it. If you sign this declaration you make an immediate and permanent gift of half your separate property to your spouse, which you cannot get back at dissolution of marriage and cannot pass by will or trust. When you die your remaining half interest in the property passes automatically to your surviving spouse without probate. You cannot give it by will or put it in a trust as long as the joint tenancy remains in effect.

Do not sign this declaration, and you should not take title as joint tenancy, if you want to keep your separate property rights.

## **DESCRIPTION OF PROPERTY**

The property that is the subject of this declaration is:

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Description of Property or Document of Title  
or Other Instrument Creating Joint Tenancy Title

**DECLARATION**

We have read the information set out above and understand that we give up community and separate property rights by signing this declaration. We declare that we intend to transmute (convert) any community property and any separate property interest either of us has in the property that is the subject of this declaration to joint tenancy, owned by us in equal shares as the separate property of each of us, and to hold the property for all purposes as joint tenants and not as community property or as separate property of either of us alone.

**Do Not Sign Unless You Have Read All of the Information Set Out Above.**

_____	_____
Signature of Spouse	Date
_____	_____
Signature of Spouse	Date

**ACKNOWLEDGMENT**

State of California     )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of officer), personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

- (b) Nothing in this section limits or affects the validity of an instrument not substantially in the form provided in this section if the instrument otherwise satisfies Section 862.
- (c) A person who provides a married person a copy of the form provided in this section is not liable for any injury that results from transmutation of community property or separate property of the married person to joint tenancy as a

consequence of providing the form. Nothing in this section is intended to relieve a person from liability for fraudulent or other improper use of the form provided in this section or from liability relating to advice given or an obligation to advise a married person concerning title.

**Comment.** Section 863 provides a “safe harbor” for the requirements of Section 862 (transmutation of marital property to joint tenancy). This section does not provide the exclusive means by which that section may be satisfied; any instrument that meets the standards in that section will satisfy it. Subdivision (b). However, use of the statutory form provided in Section 863 satisfies that section as a matter of law. Subdivision (a). It should be noted that third parties may rely on apparent joint tenancy title. Section 866.

The express declaration provision of this section is consistent with requirements in Civil Code Section 683 (“express declaration” required for joint tenancy) and Family Code Section 852 (“express declaration” required for transmutation).

Execution of the acknowledgment is optional. If the declaration affects real property it ought to be acknowledged so it is recordable.

Subdivision (c) makes clear that a person, such as a broker, escrow agent, or other advisor, who provides a married person with a copy of the statutory form is immunized from any liability that might result from its use to cause a transmutation of marital property. The intent of the immunity provision is to discourage uninformed decision-making concerning joint tenancy title by encouraging use of the statutory form which contains useful title information. Subdivision (c) is not intended to relieve an advisor from any common law liability that may exist for improperly advising a married person concerning the form of title (advice that goes beyond merely providing a copy of the statutory form), or to excuse an advisor from any duty properly to advise a married person that may arise from an attorney-client or other relationship between the advisor and the married person.

#### **§ 864. Effect of transmutation to joint tenancy**

864. Transmutation of community property or separate property of a married person to joint tenancy changes the character and tenure of the property for all purposes from community property or from separate property of the married person to joint interests of the married persons in the

property, the interest of each being the separate property of that joint tenant.

**Comment.** Section 864 makes clear that a transmutation of community property or separate property to joint tenancy results in a “true” separate property joint tenancy and not a hybrid form of tenure. Married persons may hold property as community property, or as joint tenants or tenants in common. Section 750 (methods of holding property); see also Section 861 Comment (marital property presumptions notwithstanding joint tenancy title).

At dissolution of marriage the property is treated as separate property and not as community property. See Section 2581 (presumption concerning property held in coownership form). However, the property is subject to the court’s jurisdiction at dissolution. Section 2650 (separate property held in coownership form).

A severance of the joint tenancy would ordinarily result in a tenancy in common of equal interests of the married persons, the interest of each being separate property, unless the parties provide a different arrangement in the severing instrument.

#### **§ 865. Passage of marital property by affidavit of death without probate**

865. Notwithstanding joint tenancy form of title, property of married persons that is not properly transmuted under this chapter to joint tenancy remains subject to disposition on death of a spouse in the same manner as other community property and separate property of a spouse, including passage to the surviving spouse without necessity of estate administration and clearance of title by recorded affidavit of death to the extent and in the manner provided in Part 2 (commencing with Section 13500) of Division 8 of the Probate Code.

**Comment.** Section 865 is a specific application of the rule that if marital property is not properly transmuted to joint tenancy, it retains its character for all purposes. See Section 861 & Comment (marital property presumptions notwithstanding joint tenancy title). It should be noted, however, that third parties may rely on apparent joint tenancy title. Section 866.

Section 865 serves to emphasize that for married persons joint tenancy does not offer a significant advantage over community property at death,

since community property, like joint tenancy property, may pass to the surviving spouse without probate and title may be cleared by filing an affidavit of death. See, e.g., Prob. Code §§ 13500 (no administration necessary), 13540 (affidavit of death).

### **§ 866. Reliance on joint tenancy form of title**

866. Notwithstanding any other provision of this chapter, if property is held between married persons in joint tenancy form, a person may act in reliance on the apparent joint tenancy ownership during the marriage and on the apparent right of survivorship on death of a spouse, whether or not community property or separate property is properly transmuted under this chapter to joint tenancy, unless the person has actual notice, or constructive notice based on recordation, of a contrary claim of interest in the property.

**Comment.** Section 866 facilitates transfer of property held in joint tenancy form notwithstanding any community property and separate property rights of the spouses. The provisions of this chapter governing the effect of joint tenancy title on marital property are relevant only to controversies between married persons and their successors and do not generally affect third parties. However, a third party who has actual notice by reason of a claim or court order or other means may not rely on the joint tenancy title form, nor may a third party who has constructive notice by means of a recorded claim of interest in real property.

This section does not affect the ultimate determination of substantive rights as between married persons and their successors; the substantive rights are determined by other provisions of this chapter. Thus, for example, a surviving spouse or successor holding property in joint tenancy form without notice of a contrary claim may convey good title to a bona fide purchaser under this section. This does not relieve the surviving spouse or successor of liability for the value of the deceased spouse's interest in the property if a contrary claim of interest is established.

### **§ 867. Effect on special statutes**

867. Nothing in this chapter affects any other statute that prescribes the manner or effect of a transfer, inter vivos or at death, of property registered, licensed, or otherwise documented or titled in joint tenancy form pursuant to that statute.



**Comment.** Section 867 saves existing schemes governing transfer of title, probate and nonprobate, applicable to specified types of property. See, e.g., Health & Safety Code § 18080 (coownership of manufactured home, mobilehome, commercial coach, truck camper, or floating home registration); Veh. Code §§ 4150.5, 5600.5 (coownership vehicle registration). *Cf.* Civ. Code § 683 (creation of joint interest); Fam. Code § 2581 (community property presumption for property held in joint form); Prob. Code § 5305 (presumption that funds on deposit are community property).

### **§ 868. Transitional provision**

868. (a) As used in this section, “operative date” means January 1, 1995.

(b) This chapter applies to property held between married persons in joint tenancy form as the result of an instrument that is executed or a transaction that occurs on or after the operative date.

(c) Property held between married persons in joint tenancy form as the result of an instrument that was executed or a transaction that occurred before the operative date is governed by the applicable law in effect at the time the instrument was executed or the transaction occurred.

**Comment.** Section 868 provides special transitional provisions for this chapter that are an exception to the general transitional provisions found in Section 4.

### **Fam. Code § 2581 (amended). Community property presumption for property held in joint form**

SEC. 3. Section 2581 of the Family Code is amended to read:

2581. (a) For the purpose of division of property upon dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property is presumed to be community property. ~~This presumption~~

(b) *The presumption established by subdivision (a) is a presumption affecting the burden of proof and may be rebutted by either of the following:*

(a) *(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.*

(b) *(2) Proof that the parties have made a written agreement that the property is separate property.*

(c) *A declaration of joint tenancy under Chapter 6 (commencing with Section 860) of Part 2 of Division 4 (effect of joint tenancy title on marital property) satisfies subdivision (b).*

**Comment.** Section 2581 is amended to recognize enactment of Sections 860-868, governing the effect of joint tenancy title on marital property. Under those provisions, community property and separate property in joint tenancy form retain their character without change unless there is an effective transmutation of the property. Section 861 (marital property presumptions notwithstanding joint tenancy title). Absent an effective transmutation, division of the property is governed by the presumptions and other provisions of this division. Section 861(c). Once transmuted, the property is separate property owned equally by the spouses for all purposes, but is subject to jurisdiction of the court at dissolution, as are all other forms of jointly held marital property. Section 2650 (jointly held separate property).

**Prob. Code § 5305 (amended). Presumption that funds on deposit are community property**

SEC. 4. Section 5305 of the Probate Code is amended to read:

5305. (a) Notwithstanding Sections 5301 to 5303, inclusive, if parties to an account are married to each other, whether or not they are so described in the deposit agreement, their net contribution to the account is presumed to be and remain their community property.

(b) Notwithstanding Sections 2581 and 2640 of, *and Chapter 6 (commencing with Section 860) of Part 2 of Division 4 (effect of joint tenancy title on marital property) of,*

the Family Code, the presumption established by this section is a presumption affecting the burden of proof and may be rebutted by proof of either of the following:

(1) The sums on deposit that are claimed to be separate property can be traced from separate property unless it is proved that the married persons made a written agreement that expressed their clear intent that the sums be their community property.

(2) The married persons made a written agreement, separate from the deposit agreement, that expressly provided that the sums on deposit, claimed not to be community property, were not to be community property.

(c) Except as provided in Section 5307, a right of survivorship arising from the express terms of the account or under Section 5302, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, may not be changed by will.

(d) Except as provided in subdivisions (b) and (c), a multiple-party account created with community property funds does not in any way alter community property rights.

**Comment.** Section 5305 is amended to make clear that the special transmutation provisions of Family Code Sections 860-868 for the effect of joint tenancy title on marital property are not applicable to community property in a multiple-party account. Property rights in such an account are governed by the special provisions of the California Multiple-Party Accounts Law and not by the general Family Code transmutation rules. See also Fam. Code § 867 (effect on special statutes).



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1957 Annual Report [out of print]

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Effective Date of an Order Ruling on a Motion for New Trial

Retention of Venue for Convenience of Witnesses

Bringing New Parties into Civil Actions

**VOLUME 2 (1959)**

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Right of Nonresident Aliens to Inherit

Mortgages to Secure Future Advances

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Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles

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Time Within Which Motion for New Trial May Be Made

Notice to Shareholders of Sale of Corporate Assets

### **VOLUME 3 (1961)**

1960 Annual Report

1961 Annual Report

Recommendation and Study Relating to:

Evidence in Eminent Domain Proceedings

Taking Possession and Passage of Title in Eminent Domain Proceedings [out of print]

Reimbursement for Moving Expenses When Property is Acquired for Public Use

Rescission of Contracts

Right to Counsel and the Separation of the Delinquent From the Nondelinquent

Minor in Juvenile Court Proceedings

Survival of Actions

Arbitration

Presentation of Claims Against Public Officers and Employees

Inter Vivos Marital Property Rights in Property Acquired While Domiciled

Elsewhere

Notice of Alibi in Criminal Actions

### **VOLUME 4 (1963)**

1962 Annual Report

1963 Annual Report

1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.]

Recommendations Relating to Sovereign Immunity:

Number 1 — Tort Liability of Public Entities and Public Employees

Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees

Number 3 — Insurance Coverage for Public Entities and Public Employees

Number 4 — Defense of Public Employees

Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles

Number 6 — Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers

Number 7 — Amendments and Repeals of Inconsistent Special Statutes [out of print]

Tentative Recommendation and A Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence) [out of print]

### **VOLUME 5 (1963)**

A Study Relating to Sovereign Immunity [Note: The price of this softcover publication is \$25.]

### **VOLUME 6 (1964)**

Tentative Recommendations and Studies Relating to the Uniform Rules of Evidence:

Article I (General Provisions)

Article II (Judicial Notice)

Burden of Producing Evidence, Burden of Proof, and Presumptions (replacing URE

Article III)

Article IV (Witnesses)

Article V (Privileges) [out of print]

Article VI (Extrinsic Policies Affecting Admissibility)

Article VII (Expert and Other Opinion Testimony)

Article VIII (Hearsay Evidence) [same as publication in Volume 4] [out of print]

Article IX (Authentication and Content of Writings)

## **VOLUME 7 (1965)**

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments

Recommendation Proposing an Evidence Code [out of print]

Recommendation Relating to Sovereign Immunity: Number 8 — Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees [out of print]

## **VOLUME 8 (1967)**

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes the following recommendations:

Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Improvements Made in Good Faith Upon Land Owned by Another

Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

Good Faith Improver of Land Owned by Another

Suit By or Against An Unincorporated Association

Recommendation Relating to The Evidence Code:

Number 1 — Evidence Code Revisions

Number 2 — Agricultural Code Revisions [out of print]

Number 3 — Commercial Code Revisions

Recommendation Relating to Escheat

Tentative Recommendation and A Study Relating to Condemnation Law and Procedure:

Number 1 — Possession Prior to Final Judgment and Related Problems

## **VOLUME 9 (1969)**

Annual Report (December 1968) includes the following recommendations:

Sovereign Immunity: Number 9 — Statute of Limitations in Actions Against Public Entities and Public Employees

Additur and Remittitur

Fictitious Business Names



Annual Report (December 1969) includes the following recommendations: [out of print]

Quasi-Community Property

Arbitration of Just Compensation

The Evidence Code: Number 5 — Revisions of the Evidence Code

Real Property Leases

Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation and Study Relating to:

Mutuality of Remedies in Suits for Specific Performance

Powers of Appointment [out of print]

Fictitious Business Names

Representations as to the Credit of Third Persons and the Statute of Frauds

The “Vesting” of Interests Under the Rule Against Perpetuities

Recommendation Relating to:

Real Property Leases

The Evidence Code: Number 4 — Revision of the Privileges Article

Sovereign Immunity: Number 10 — Revisions of the Governmental Liability Act

### **VOLUME 10 (1971)**

Annual Report (December 1970) includes the following recommendation:

Inverse Condemnation: Insurance Coverage

Annual Report (December 1971) includes the following recommendation:

Attachment, Garnishment, and Exemptions From Execution: Discharge From  
Employment

California Inverse Condemnation Law

Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of  
Causes of Action, and Related Provisions

Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution:  
Employees’ Earnings Protection Law

### **VOLUME 11 (1973)**

Annual Report (December 1972)

Annual Report (December 1973) includes the following recommendations:

Evidence Code Section 999 — The “Criminal Conduct” Exception to the Physician-  
Patient Privilege

Erroneously Ordered Disclosure of Privileged Information

Recommendation and Study Relating to:

Civil Arrest

Inheritance Rights of Nonresident Aliens

Liquidated Damages

Recommendation Relating to:

Wage Garnishment and Related Matters

Claim and Delivery Statute

Unclaimed Property

Enforcement of Sister State Money Judgments

Prejudgment Attachment

Landlord-Tenant Relations

Tentative Recommendation Relating to Prejudgment Attachment

**VOLUME 12 (1974)**

Annual Report (December 1974) includes the following recommendations:

- Payment of Judgments Against Local Public Entities
- View by Trier of Fact in a Civil Case
- The Good Cause Exception to the Physician-Patient Privilege
- Escheat of Amounts Payable on Travelers Checks, Money Orders and Similar Instruments

Recommendation Proposing the Eminent Domain Law

Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts

Recommendation Relating to Wage Garnishment Exemptions

Tentative Recommendations Relating to Condemnation Law and Procedure:

- The Eminent Domain Law
- Condemnation Authority of State Agencies
- Conforming Changes in Special District Statutes

**VOLUME 13 (1976)**

Annual Report (December 1975) includes the following recommendations:

- Admissibility of Copies of Business Records in Evidence
- Turnover Orders Under the Claim and Delivery Law
- Relocation Assistance by Private Condemnors
- Condemnation for Byroads and Utility Easements
- Transfer of Out-of-State Trusts to California
- Admissibility of Duplicates in Evidence
- Oral Modification of Contracts
- Liquidated Damages

Annual Report (December 1976) includes the following recommendations:

- Service of Process on Unincorporated Associations
- Sister State Money Judgments
- Damages in Action for Breach of Lease
- Wage Garnishment
- Liquidated Damages

Selected Legislation Relating to Creditors' Remedies

Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments

Recommendation and Study Relating to Oral Modification of Written Contracts

Recommendation Relating to:

- Partition of Real and Personal Property
- Wage Garnishment Procedure
- Revision of the Attachment Law
- Undertakings for Costs
- Nonprofit Corporation Law

**VOLUME 14 (1978)**

Annual Report (December 1977) includes the following recommendations:

- Use of Keepers Pursuant to Writs of Execution
- Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors
- Review of Resolution of Necessity by Writ of Mandate
- Use of Court Commissioners Under the Attachment Law

Evidence of Market Value of Property  
Psychotherapist-Patient Privilege  
Parol Evidence Rule  
Annual Report (December 1978) includes the following recommendations:  
Technical Revisions in the Attachment Law includes the following recommendations:  
Unlawful Detainer Proceedings  
Bond for Levy on Joint Deposit Account or Safe Deposit Box  
Definition of "Chose in Action"  
Ad Valorem Property Taxes in Eminent Domain Proceedings  
Security for Costs  
Recommendation Relating to Guardianship-Conservatorship Law

## **VOLUME 15 (1980)**

### **Part I**

Annual Report (December 1979) includes the following recommendations:  
Effect of New Bankruptcy Law on the Attachment Law  
Confessions of Judgment  
Special Assessment Liens on Property Taken for Public Use  
Assignments for the Benefit of Creditors  
Vacation of Public Streets, Highways, and Service Easements  
Quiet Title Actions  
Agreements for Entry of Paternity and Support Judgments  
Enforcement of Claims and Judgments Against Public Entities  
Uniform Veterans Guardianship Act  
Psychotherapist-Patient Privilege  
Enforcement of Obligations After Death  
Guardianship-Conservatorship Law with Official Comments  
Recommendation Relating to:  
Enforcement of Judgments includes the following recommendations:  
Interest Rate on Judgments  
Married Women as Sole Traders  
State Tax Liens  
Application of Evidence Code Property Valuation Rules in Noncondemnation Cases  
Uniform Durable Power of Attorney Act  
Probate Homestead

## **VOLUME 15 (1980)**

### **Part II**

Annual Report (December 1980) includes the following recommendation:  
Revision of the Guardianship-Conservatorship Law includes the following recommendations:  
Appointment of Successor Guardian or Conservator  
Support of Conservatee Spouse from Community Property  
Appealable Orders  
Recommendations Relating to Probate and Estate Planning:  
Non-Probate Transfers  
Revision of the Powers of Appointment Statute  
Tentative Recommendation Proposing the Enforcement of Judgments Law

**VOLUME 16 (1982)**

Annual Report (December 1981) includes the following recommendation:

Federal Military and Other Federal Pensions as Community Property

Annual Report (December 1982) includes the following recommendations:

Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage

Creditors' Remedies includes the following recommendations:

Amount Secured by Attachment

Execution of Writs by Registered Process Servers

Technical Amendments

Dismissal for Lack of Prosecution

Conforming Changes to the Bond and Undertaking Law

Notice of Rejection of Late Claim Against Public Entity

Recommendation Relating to:

Holographic and Nuncupative Wills

Marketable Title of Real Property

Statutory Bonds and Undertakings

Attachment

Probate Law and Procedure includes the following recommendations:

Missing Persons

Nonprobate Transfers

Emancipated Minors

Notice in Limited Conservatorship Proceedings

Disclaimer of Testamentary and Other Interests

1982 Creditors' Remedies Legislation

Tentative Recommendation Relating to Wills and Intestate Succession

**VOLUME 17 (1984)**

Annual Report (December 1983) (\$25) includes the following recommendations:

Effect of Death of Support Obligor

Dismissal for Lack of Prosecution

Severance of Joint Tenancy

Effect of Quiet Title and Partition Judgments

Dormant Mineral Rights

Creditors' Remedies includes the following recommendations:

Levy on Joint Deposit Accounts

Issuance of Earnings Withholding Orders by Registered Process Servers

Protection of Declared Homestead After Owner's Death

Jurisdiction of Condominium Assessment Lien Enforcement

Technical Amendments

Rights Among Cotenants in Possession and Out of Possession of Real Property

Recommendation Relating to:

Liability of Marital Property for Debts (January 1983) (\$8.50)

Durable Power of Attorney for Health Care Decisions (March 1983) (\$8.50)

Statutory Forms For Durable Powers of Attorney [out of print]

Family Law (November 1983) (\$18) includes the following recommendations:

Marital Property Presumptions and Transmutations

Disposition of Community Property

Reimbursement of Educational Expenses

Special Appearance in Family Law Proceedings

Liability of Stepparent for Child Support

Awarding Temporary Use of Family Home  
Probate Law (November 1983) (\$25) includes the following recommendations:  
Independent Administration of Decedent's Estates  
Distribution of Estates Without Administration  
Execution of Witnessed Wills  
Simultaneous Deaths  
Notice of Will  
Garnishment of Amounts Payable to Trust Beneficiary  
Bonds for Personal Representatives  
Revision of Wills and Intestate Succession Law  
Recording Affidavit of Death  
Statutes of Limitation for Felonies (January 1984) (\$8.50)  
Uniform Transfers to Minors Act (January 1984) (\$18)

### **VOLUME 18 (1986)**

Annual Report (March 1985) (\$25) includes the following recommendations:  
Provision for Support if Support Obligor Dies  
Transfer Without Probate of Certain Property Registered by the State  
Dividing Jointly Owned Property Upon Marriage Dissolution  
Annual Report (December 1985) (\$25) includes the following recommendations:  
Protection of Mediation Communications  
Recording Severance of Joint Tenancy  
Abandoned Easements  
Distribution Under a Will or Trust  
Effect of Adoption or Out of Wedlock Birth on Rights at Death  
Durable Powers of Attorney  
Litigation Expenses in Family Law Proceedings  
Civil Code Sections 4800.1 and 4800.2  
Annual Report (December 1986) (\$25) includes the following recommendations:  
Notice in Guardianship and Conservatorship Proceedings  
Preliminary Provisions and Definitions of the Probate Code  
Technical Revisions in the Trust Law  
Recommendation Proposing the Trust Law (December 1985) (\$25)  
Recommendations Relating to Probate Law (December 1985) (\$25) includes the following recommendations:  
Disposition of Estates Without Administration  
Small Estate Set-Aside  
Proration of Estate Taxes  
Selected 1986 Trust and Probate Legislation (September 1986) (\$40)

### **VOLUME 19 (1988)**

Recommendations Relating to Probate Law (January 1987) (\$25) includes the following recommendations:  
Supervised Administration of Decedent's Estate  
Independent Administration of Estates Act  
Creditor Claims Against Decedent's Estate  
Notice in Probate Proceedings  
Annual Report (December 1987) (\$25) includes the following recommendations:  
Marital Deduction Gifts  
Estates of Missing Persons  
The Uniform Dormant Mineral Interests Act

Recommendations Relating to Probate Law (December 1987) (\$25) includes the following recommendations:

- Public Guardians and Administrators
- Inventory and Appraisal
- Opening Estate Administration
- Abatement
- Accounts
- Litigation Involving Decedents
- Rules of Procedure in Probate
- Distribution and Discharge
- Nondomiciliary Decedents
- Interest and Income During Administration

Annual Report (December 1988) (\$25) includes the following recommendations:

Creditors' Remedies:

- Revival of Junior Liens Where Execution Sale Set Aside
- Time for Setting Sale Aside
- Enforcement of Judgment Lien on Transferred Property After Death of Transferor-Debtor

## **VOLUME 20 (1990)**

Recommendations Relating to Probate Law (February 1989) (\$25) includes the following recommendations:

- No Contest Clauses
- 120-Hour Survival Requirement
- Hiring and Paying Attorneys, Advisors and Others
- Compensation of Personal Representative
- Multiple-Party Accounts in Financial Institutions
- Notice to Creditors in Probate Proceedings

Annual Report (December 1989) (\$25) includes the following recommendations:

- Commercial Lease Law: Assignment and Sublease
- Trustees' Fees

Recommendation Relating to Powers of Attorney (December 1989) (\$18) includes the following recommendations:

- Springing Powers of Attorney
- Uniform Statutory Form Power of Attorney

Recommendations Relating to Probate Law (December 1989) (\$25) includes the following recommendations:

- Notice to Creditors in Estate Administration
- Disposition of Small Estate by Public Administrator
- Court-Authorized Medical Treatment
- Survival Requirement for Beneficiary of Statutory Will
- Execution or Modification of Lease Without Court Order
- Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding
- Repeal of Probate Code Section 6402.5 (In-Law Inheritance)
- Access to Decedent's Safe Deposit Box
- Priority of Conservator or Guardian for Appointment as Administrator

Recommendation Proposing the New Probate Code (December 1989)

Revised and Supplemental Comments to the New Probate Code (September 1990)

[The two publications listed immediately above are available *only* as a set, at a cost of \$35 per set. The individual pamphlets are not available separately.]

Annual Report (December 1990) (\$25) includes the following recommendations:

- Notice in Probate Where Address Unknown
- Jurisdiction of Superior Court in Trust Matters
- Uniform Management of Institutional Funds Act
- Discovery After Judicial Arbitration

Recommendations Relating to Commercial Real Property Leases (May 1990) (\$8.50) includes the following recommendations:

- Remedies for Breach of Assignment or Sublease Covenant
- Use Restrictions

Recommendation Relating to Uniform Statutory Rule Against Perpetuities (September 1990) (\$18)

Recommendation Relating to Powers of Attorney (November 1990) (\$8.50) includes the following recommendations:

- Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care
- Recognition of Agent's Authority Under Statutory Form Power of Attorney

Recommendation Relating to Probate Law (November 1990) (\$25) includes the following recommendations:

- 1991 Probate Urgency Clean-Up Bill
- Debts That Are Contingent, Disputed, or Not Due
- Remedies of Creditor Where Personal Representative Fails to Give Notice
- Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)
- Disposition of Small Estate Without Probate
- Right of Surviving Spouse to Dispose of Community Property
- Litigation Involving Decedents
- Compensation in Guardianship and Conservatorship Proceedings
- Recognition of Trustees' Powers
- Access to Decedent's Safe Deposit Box
- Gifts in View of Impending Death
- TOD Registration of Vehicles and Certain Other State Registered Property

## **VOLUME 21 (1991)**

[Bound with Volume 22]

Annual Report for 1991 (\$18) includes the following recommendation:

- Application of Marketable Title Statute to Executory Interests

Recommendations (November 1991) (\$25) includes the following recommendations:

- Relocation of Powers of Appointment Statute
- Miscellaneous Creditors' Remedies Matters
- Nonprobate Transfers of Community Property
- Notice of Trustees' Fees
- Nonprobate Transfer to Trustee Named in Will
- Preliminary Distribution Without Court Supervision
- Transfer of Conservatorship Property to Trust
- Compensation in Guardianship and Conservatorship Proceedings

## **VOLUME 22 (1992)**

[Bound with Volume 21]

Family Code (July 1992) (\$40)

Annual Report for 1992 (\$25) includes the following recommendations:

- Litigation Involving Decedents (Revised)
- Standing to Sue for Wrongful Death

Recognition of Agent's Authority Under Statutory Form Power of Attorney (Revised)  
Special Needs Trust for Disabled Minor or Incompetent Person

## **VOLUME 23 (1993)**

[Not yet available]

1994 Family Code with Official Comments (November 1993) (\$40)

1994 Family Code

Child Custody

Reorganization of Domestic Violence Provisions

Annual Report for 1993 (\$25) includes the following recommendations:

Deposit of Estate Planning Documents

Parent and Child Relationship for Intestate Succession

Effect of Joint Tenancy Title on Marital Property